SUB:
ODOD-91-004

Ohio Department of Development
Office of Local Government Services

Ohio
Rural Zoning Handbook

Fourth Edition
1991

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PUBLISHED BY THE OHIO DEPARTMENT OF DEVELOPMENT
OFFICE OF LOCAL GOVERNMENT SERVICES
77 SOUTH HIGH STREET
P.O. BOX 1001
COLUMBUS, OHIO 43266-0101

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ACKNOWLEDGEMENT

The cooperation of the County Commissioners Association of Ohio, the Ohio State Association of Township Trustees and Clerks, and the Ohio Department of Health, the Ohio Department of Transportation, and the Ohio Department of Industrial Relations is gratefully acknowledged.

IMPORTANT NOTICE

The enactment, amendment, and administration of zoning regulations are highly complex procedures which require great attention to detail. Moreover, a significant body of case law and Attorney General's opinions pertain to the applicable provisions of the Ohio Revised Code. Hence, it is strongly recommended that local elected and appointed officials secure appropriate legal counsel when endeavoring to exercise the powers granted under ORC Chapters 303 and 519. Technical assistance may also be obtained from the County Commissioners Association of Ohio and the Ohio State Association of Township Trustees and Clerks.

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INTRODUCTION TO RURAL ZONING

THE BEGINNING OF ZONING

Mankind has always attempted to regulate land use for his comfort, safety, or convenience. Thus, land uses have been segregated since the time of the ancient Egyptians. Usually, this was done by edict or law. During the nineteenth century, zoning type controls were enacted to regulate the building heights around Boston's Copely Square, the location of laundries and slaughter houses in San Francisco, and the location of houses of prostitution in New Orleans.

Zoning as we know it today first emerged in New York City with the enactment of a comprehensive zoning ordinance in 1916, which was enacted to protect high-class residential areas and exclusive department stores from intrusions by garment factories. These garment factories encouraged the nearby construction of tenement houses for immigrants who were employed in the factories, and of cheap hotels where buyers would reside when visiting the city. Thus, zoning was first used to protect residential areas from the intrusion of industries, and to protect property values. These are still two major purposes of zoning today.

In 1919, Ohio enacted enabling legislation allowing municipalities to adopt zoning ordinances, becoming one of only 10 states to do so. By 1924, 12 Ohio municipalities had zoning laws in effect. In that same year, a "Standard State Zoning Enabling Act," published by a special committee appointed by the Secretary of Commerce, Herbert Hoover, gave federal government sanction to the concept of zoning. This "Standard Act" still serves as the basis for Ohio's enabling legislation. In late 1926, Ohio played a vital role in the U.S. Supreme Court's decision on the constitutionality of zoning. In its decision on the case of the Village of Euclid vs. Amber Realty Company (272 U.S. 365), the Court found comprehensive zoning a legitimate police power regulation. The Supreme Court was to hear only one other zoning case in the next 50 years.

RURAL ZONING IN OHIO

The power to zone in rural areas was first proposed in 1921, as part of a bill dealing with county and regional planning, which was defeated. A similar bill on county and regional planning, passed in 1923, was enacted only after its opponents succeeded in gutting that portion of the bill authorizing zoning in unincorporated areas.

Although another pro rural zoning bill was defeated in 1929, sentiment for a county zoning act was growing stronger. Since many industrialists felt hampered by the constraints of municipal zoning ordinances, unincorporated areas were starting to suffer from the first wave of industrial expansion and decentralization. Population growth and mobility added new pressures for rural areas. In 1910, Ohio had but 33,000 registered motor vehicles; 10 years later the figure had grown to 750,000. This increased use of the automobile, and the development of interurban rail systems, made many rural areas of Ohio accessible for the first time. Ironically, the mechanization of farming increased productivity and decreased the number of persons needed for farm employment.

Several rural zoning bills were unsuccessfully proposed in the next two decades, but the groundwork for a two-tiered system of rural zoning in Ohio's townships and counties was laid. Finally, in 1947, the Ohio General Assembly passed legislation permitting counties and townships to zone, legislation which is substantially unchanged today. In the first election after the effective date of this act, 16 of 18 Franklin County townships and five of 13 Hamilton County townships approved zoning.

THE PURPOSE AND TYPES OF RURAL ZONING

Selecting the use of the land has historically been considered as an individual right of property ownership. In the past, land was developed by the owner in a manner to conform with his wishes. In some cases, however, the desire of the owner was in conflict with that of the neighboring owners. Thus, the concept that a land owner may use his land as he sees fit is valid until the chosen use has an adverse or harmful effect on others. For example, a noisy factory should not be located adjacent to a new residential subdivision because of its harmful impact on the homeowners.

The purpose of this chapter is to explore the general concept of zoning. It will discuss the purpose of zoning, the legal basis and limitations of zoning, what zoning can and cannot accomplish, and the types of rural zoning authorized in Ohio.

WHAT IS ZONING?

Simply stated, zoning is a locally enacted law that regulates and controls the use of private property. Zoning involves dividing the countryside into districts or zones for agricultural, residential, commercial, industrial, and public purposes. The zoning law or resolution then states which specific uses are permitted in each district, and under what circumstances. Zoning also regulates the size of lots, the distances which buildings must be set back from roads or property lines, the maximum height of buildings, the population density, and other land use considerations. Thus, zoning is one response to the complexities of modern life. Zoning began in cities because, as people started living and working closer together, a means was required to accommodate the desires of individuals while also considering the collective common good of all individuals.

PURPOSES OF ZONING

A major purpose of zoning is to put land to the use for which it is best suited. Of course, determining the best use for land is not always easy. Some land is best left to be cultivated because of its unique soil characteristics. Other land may be ideally suited for commercial development because it is located near a major highway. Other land, located near a railroad or airport, for example, may be prime land for an industrial park. Agricultural or open space uses may be the best for lands located in a flood plain.

Another issue, however, is to determine what appears to be the best potential use of specific parcels of land in the future. This involves the process of future land use planning, which is explained elsewhere. A good future land use plan must consider economic and social factors as well as physical characteristics of the land. Land in Ohio best suited for farming is often also the best land for housing developments. In such instances, it is necessary for local residents and decision-makers to determine what they want their area to be in the future and to conduct a program that will achieve this desire. In making decisions about the future of their area, however, local officials should consider the needs and characteristics of the larger region, as well as their immediate area.

Another important purpose of zoning is to protect or maintain property values. Zoning can protect the value of property by assuring that incompatible uses will be kept apart. Zoning can keep factories out of residential areas (which could lower the value of homes in the immediate vicinity), as well as keep residential developments from locating in industrial areas.

Zoning can also promote the public health and safety by requiring that lots be large enough to allow for the safe disposal of septic tank effluent, and by requiring that homes be spaced far enough apart that fires will not spread easily. The promotion of public health and safety are the two basic purposes for which counties and townships are authorized to enact zoning. Both purposes are very broad and may include a wide variety of specific regulations.

Zoning also provides for more orderly development. Regulations pertaining to lot size, set back lines, building height, and population density can make areas more attractive. With zoning local residents can ensure that poor development will not occur.

Finally, zoning can be important in attracting business and industry to an area. Sufficient good land should be zoned for business and industry that is uniquely suited for business and industry and has adequate access and public facilities.

THE LEGAL BASIS OF ZONING

Local governments have three broad types of power: taxation, eminent domain, and police power. Taxation is the legitimate taking of private wealth for public purposes by government. Eminent domain is the taking of land for public purposes. Under the concept of eminent domain, the property owner must be compensated for the market value of the appropriated land. The police power is action by government that protects or promotes the public health, safety, morals or general welfare of its citizens. Police powers for the promotion of the general welfare include both the obvious one, law enforcement, and a wide range of other activities such as health law, pollution control law, building codes, subdivision regulations, and zoning.

For a zoning resolution to be legal, it must be fully within the concept of the general welfare; that is (1) it must secure a public purpose; (2) it must be reasonable; and (3) it must not be confiscatory.

The public purpose of zoning is to prevent landowners from using their land to the detriment of the general welfare of the community at large. Any action of a landowner which has no bearing on the general welfare of community, such as the color of his house or the arrangement of his furniture, is outside the scope of zoning.

Zoning regulations must also be reasonable. There must be a valid reason, the furtherance of the general welfare, for the regulation to exist, and it must bear at least some relationship to a public purpose. If a zoning resolution sets minimum floor areas for dwellings, the county or townships must be able to show that the requirement bears a reasonable relationship to the general welfare of the area. If certain land uses are to be excluded or severely restricted in the township, the rationale for the exclusion must bear a reasonable relationship to the general welfare (the health, safety, convenience, comfort, and prosperity of the citizens).

The third aspect of the general welfare concept is that zoning must not be confiscatory. The confiscatory element means that the regulation should not prohibit all profitable uses from the land. Zoning regulations that limit extremely valuable land to low-intensity uses may be confiscatory. A zoning regulation that prohibits golf courses on rolling wooded land with farmed-out soils might also be confiscatory. If land is being regulated to the extent that the effect is to take the land, courts often rule that the regulation is beyond the scope of the police power and is unconstitutional as applied to the owner's property.

ZONING AND AGRICULTURE

Most rural areas in Ohio, because they are not developed, need some form of zoning to protect their natural resources before they are developed unwisely. Once unplanned development occurs, it is present almost forever, and agricultural land rarely is returned to its former productive use. The owners of rural land, and in many cases the individual farmer, have the most to gain from rural zoning. A township or county zoning resolution may not prohibit the use of any land for agricultural purposes, with one exception as provided for in Sections 303.21 and 519.21 of the Revised Code:

> ....except that a county (township) zoning resolution, or an amendment or supplement to such resolution, may regulate agriculture in any platted subdivision approved under section 711.05 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road.

In addition, a township or county zoning resolution necessarily excludes structures directly related to agricultural uses. Exempt agricultural structures can be either additions to existing structures or new construction. Examples of these buildings may be storage facilities, barns, feedlots, or equipment buildings.

A 1962 opinion of the Ohio Attorney General addressed the issue of zoning as it relates to agriculture. According to the opinion, a structure used as a dwelling unit by a person engaged in agriculture is not exempt from the provisions of a rural zoning resolution. The main reason for this opinion is that a dwelling is not necessarily directly related to the agricultural use of the land.

OTHER LAND USES THAT ARE EXEMPT FROM RURAL ZONING

Agriculture is only one of several types of land uses which are exempt (except for the provision cited above) from county or township zoning resolutions. The Ohio Revised Code also exempts railroads and public utilities from compliance with township or county zoning regulations.

A motor freight carrier is exempt from rural zoning resolutions since it is classified as a public utility. Water and sewer systems are also exempt from zoning. An opinion by the Attorney General stated that a corporation which constructs, maintains, and operates a water system is a public utility, and property used by this corporation is exempt from the provisions of a rural zoning resolution.

There are two other important exemptions from rural zoning resolutions. The Ohio Revised Code states that "outdoor advertising (billboards) shall be classified as a business use and be permitted in all districts zoned for industry, business or trade, or lands used for agricultural purposes." The distinction between "districts zoned" and "lands used" should be carefully noted. Also exempt from regulation is the sale or serving of alcoholic beverages in a zone where retail stores and restaurants are permitted.

WHAT ZONING CAN AND CANNOT DO

As with many public issues, people tend to take extreme positions on the value of zoning. Those favoring zoning may make claims that are beyond reasonable expectations. Opponents of zoning often deny that zoning can do anything to make an area a better place to live. Both claims need to be moderated to be realistic. Rural zoning will not solve all land use problems already evident. Neither will it prevent all future problems.

There are, however, many ways that zoning can be useful. Following are some examples of what zoning can accomplish.

WHAT ZONING CAN DO

1. Discourage non-farm development in farming areas.

2. Protect farmers from limitations on spraying, machinery operation, and manure dispcsal by limiting the number of future non-farm rural residences.

3. Reduce local traffic on roads used by farmers for field machinery.

4. Keep rural water tables from being lowered due to new wells for non-farm purposes.

5. Protect farmers from having to pay excessive property taxes or assessments to finance public services such as water and sewer lines to new rural residents.

6. Keep noisy drive-ins, taverns, dance halls, and other incompatible land uses out of quiet residential areas.

7. In lake areas, preserve the shoreline scenery by requiring setbacks for cottages and other structures.

8. Require construction to be completed within a reasonable period of time.

9. Help keep traffic moving through commercial sections by requiring business establishments to have off-street parking spaces and loading facilities.

10. Encourage traffic generators, such as shopping centers, entertainment places, and drive-ins to locate where roads are adequate and traffic will not disturb residential areas.

11. Discourage strip development along major roads that could cause traffic accidents.

12. Limit the location and size of signs and billboards.

13. Help to keep adequately served and located land available for industrial and commercial development.

14. Discourage or prevent the placing of structures on land frequently flooded.

WHAT ZONING CANNOT DO

It is easy for zoning enthusiasts to overlook its limitations or to confuse zoning with other regulatory devices, such as subdivision regulations, building codes, and sanitary regulations. It is also common for zoning critics to believe sincerely that zoning will be used in ways beyond legal boundaries established in the Constitution. The following lists include types of action that are beyond the authority of rural zoning to control.

Group A includes achievements that a governmental unit can accomplish, but only through measures such as the acquisition of property rights or other development controls. Group B consists of actions that cannot be achieved through zoning because of legal limitations flowing from the U.S. and Ohio Constitutions, court decisions and laws, or because of the nature of zoning as a public decision needing political support.

GROUP A

May be done by other government actions (sometimes indicated in parentheses), but not by zoning.

ZONING CANNOT

1. Pay a landowner to compensate him for a loss in property value because of restrictions placed on the land.

2. Give a local government representative the right to enter private property except for purposes of inspection.

3. Force an immediate cessation of a land use practice that is a public nuisance. (court order)

4. Give the public the right to use land next to a public stream or lake for access to public waters. (purchase of access rights)

5. Assure a landowner that his property will not be assessed for taxing purposes above its value for uses permitted by existing zoning regulations.

6. Require a developer to dedicate land in a new development for public schools, parks or streets. (subdivision regulations)

7. Assure that buildings are constructed in accordance with recommended fire protection standards or standards of structural soundness. (building code)

8. Require homeowners to install septic tank systems that are adequate for existing soil and water table conditions. (sanitation regulations)

9. Give a public body the right to build a drainage ditch across private property. (easement)

10. Force a property owner to allow the crossing of private property by pipelines and utility lines. (eminent domain)

11. Require that the government be given first refusal rights if property is offered for sale. (purchase option)

12. Require people to paint and repair their buildings. (housing code)

GROUP B

Cannot be accomplished through zoning because of legal, political, or practical limitations.

ZONING CANNOT

1. Prevent mineral or petroleum exploration and withdrawal by someone owning mineral or petroleum rights to the land.

2. Force landowners to stop using existing buildings that do not conform with uses permitted under the terms of a new zoning resolution.

3. Effectively control the location of public uses, such as highway equipment sheds, sewage treatment plants, sanitary land fills, public schools, and other public buildings.

4. Keep land in farming for a long period when it is close to a rapidly expanding city.

5. Prevent a property owner from selling property to anyone he chooses.

6. Prevent adjacent counties, cities or townships from putting a heavy industrial zone next to an area zoned for single family homes.

7. Restrict the use of land for agricultural pursuits, with the exception of the provision already cited.

These lists should help to develop a perspective on the value of zoning. Zoning's accomplishments depend primarily on the regulations and standards in a particular resolution, and upon fair but tough administration.

DIFFERENCES IN TOWNSHIP AND COUNTY ZONING

Ohio law authorizes two types of rural zoning: county and township. The major difference between the two is one of administration.

County zoning is the responsibility of the Board of County Commissioners. They are assisted by a zoning inspector, a zoning commission, and a board of zoning appeals. County zoning may be enacted by the majority vote in each township. Not all the townships are forced to adopt county zoning, and it will only be in effect in those townships that approve it.

Township zoning is the responsibility of the Board of Township Trustees of each township. Each township, under this type of zoning, has its own resolution, zoning inspector, zoning commission, and board of zoning appeals.

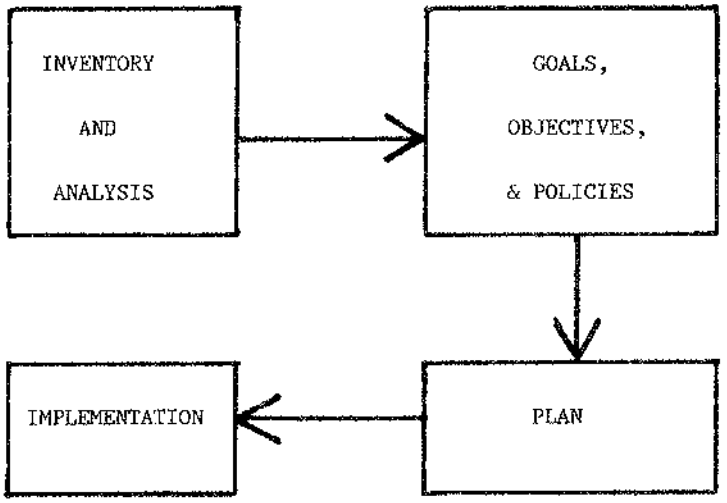
Planning and zoning are not the same. This is one of the most frequent misunderstandings among rural residents. A plan is a guideline or concept for future community growth. Zoning is a legal method to control the use of land.

A good farmer plans so that every acre of his farm is put to the use for which it is best suited. He knows the slope, drainage, texture and fertility of his soils and he makes decisions on the basis of his knowledge. He also knows how he will rotate his crops in future years. Planning for land use may be considered similar to farm planning, but covering all the needed uses of land for an entire township or county. Just as the farmer tried to make the best use of his land for crops, so planners try to plan for the best use of all lands, including agriculture. Just as a farmer has some idea of where he will be planting corn and soybeans in three years, so planners try to determine where various residential, commercial and industrial uses should locate in the future.

If economic and other conditions change, however, the farmer may have to adjust his plans. It may be more desirable for him to plant more corn and less soybeans than he had originally planned. A farmer may choose to phase out his dairy herd and change to a beef cattle operation. Likewise, a planner may have to revise his overall land use plan because of the changing conditions in an area. A plan must be flexible and adjustable to changing conditions.

A plan usually contains a long range look at an area. It often projects a twenty-year time period. Zoning is one tool that can be used to achieve the recommendations of a plan. Zoning usually reflects a shorter range perspective than planning by showing land needs for approximately five years. Zoning, however, is only one small part of the comprehensive planning process. The four major stages of the comprehensive planning process are shown in the following diagram:

THE COMPREHENSIVE PLANNING PROCESS



INVENTORY AND ANALYSIS

The first stage in the planning process is inventory and analysis. At this stage, facts are collected on a variety of existing conditions in the township or county. The planner determines the existing population and economic conditions, and makes future projections. He gathers information on the natural environmental and the physical characteristics, such as depth to bedrock, geology, soils and underground water supplies.

The planner then maps each parcel of land in the area, indicating its existing use (for example, commercial, residential or industrial). The planner also determines the number, location and characteristics of existing public services and facilities, including schools, fire stations, parks, open spaces, water and sewer, telephone and other utilities. An inventory also involves an analysis of existing financial resources.

GOALS, OBJECTIVES AND POLICIES

The second stage of the planning process involves identifying goals, objectives, and policies. This task is both important and difficult because the final product should be a composite of local opinion about what the citizens want their area to be in the future. The drafting of goals, objectives and policies should also focus on the needs of the larger region of which the township or county is a part. They should be stated in specific terms pertaining to matters such as land use, transportation, public facilities and services, and housing. This comprehensive policy plan is a wide-ranging summary of community commitments and is less detailed than the physical development plan that many associate with planning.

The following policies are characteristic policy statements that could be adopted by a county in its comprehensive policies plan. By evaluating the impact of specific zoning decisions in the context of these suggested policies, zoning can, in the long run, become more meaningful and effective. The following policy statements are only some general examples:

GROWTH POLICY

New growth and development should adjoin presently developed areas. Scattered subdivisions and spot and strip developments are more costly to service with adequate roads, schools, police and fire protection, and water and sewer than is concentrated development.

PHYSICAL DEVELOPMENT LIMITATIONS POLICY

Land that has inherent limitations for development because of soil permeability, topography, drainage, shrink-swell characteristics, flooding, depth-to-bedrock and other physical development constraints should be restricted from development.

AVOIDANCE OF POTENTIAL LAND USE CONFLICTS POLICY

The development of land in rural areas for urban residential uses may encourage severe land use conflicts. Such conflicts should be avoided.

AGRICULTURAL LAND POLICY

Land that is predominantly being utilized for the intensive cultivation of crops and which is uniquely suited for farming operations should be restricted from urban land use encroachments.

These policy statements, which should reflect the goals and objectives of an area, are sufficient reasons upon which to base individual zoning decisions. By having policy statements adopted in an area, the decision-making process is simplified for zoning administrators. Policies are especially important in rural areas because it is very difficult to place individual rezoning requests in perspective without reviewing proposals in terms of their cumulative impact on the future of an area.

PLAN FORMULATION

The third stage of the planning process is usually referred to as plan formulation. This involves the development of plans for future land use, public facilities and service needs, and transportation and open space. This comprehensive physical development plan also recommends areas for residential, commercial, and industrial development, and areas that should be reserved for open space, recreation or public uses. This plan is usually portrayed on maps with accompanying texts and explanatory reports.

IMPLEMENTATION

The final stage of the planning process is implementation. This stage involves working with a wide variety of tools, including zoning. Zoning is one of a number of land use controls. Other controls include subdivision regulations, building and housing codes, and sanitation regulations. Of the many techniques of land use control, townships are enabled to enact only zoning. Counties may exercise all of the other forms of control, in addition to zoning.

In addition to these controls, effective plan implementation should include a program for future capital improvements. A capital improvements program shows approximate costs for recommended improvements, sets priorities, and determines when funds can be available to construct improvements. The location of future capital improvements greatly influences where future development will occur.

The comprehensive planning process should also include citizen participation. For a plan to be realistic, citizens must be involved in order to both inform the public and enable the residents to contribute. By giving the citizens the opportunity to participate, all phases of planning are strengthened.

ZONING EDUCATION

The enactment of rural zoning is sometimes a controversial issue. It is a democratic process in that, before zoning becomes effective in any township, it must be voted on by the citizens residing in the unincorporated area of that township. Unless a majority of the residents in the unincorporated area approve zoning for their township, no zoning will be in effect. Other land use controls in the county, such as building codes, housing regulations, sanitation regulations and subdivision regulations, are not approved by referendum. In municipal areas, zoning ordinances also do not have to be approved by a vote before they go into effect.

The last four decades have been times of great change in rural Ohio. The cities of Ohio have expanded into the countryside. New highway systems have made once isolated rural areas accessible. The number of farms has decreased greatly, and many "city dwellers" moved to get away from the congestion and pollution of the big city. Even in the more remote areas of Ohio, urban residents are buying land for weekend or summer retreats. Every indication is that this trend will probably continue. It may thus be desirable to place restrictions on the use of land in rural areas. With zoning there is some protection. Without zoning little protection is available, and unplanned growth may cause future problems.

In every township there is usually a small number of people against zoning. There is also usually a small group of residents who are strong advocates for rural zoning. The majority of people, however, will not have definite thoughts about the issue. Because the group that is opposed to zoning is usually extremely vocal, they are often heard by other residents. Often the opponents of zoning are not properly informed and may misinform the other residents about the zoning issue. It is desirable for zoning supporters to organize an education program. This can assure that accurate information is available so residents may vote intelligently on zoning. Following is a discussion of methods to consider for an education program.

METHODS FOR ZONING EDUCATION

1. Public Meetings Before zoning is voted upon, the Revised Code requires at least two public hearings. Meetings other than those required by law could be useful to better inform residents of what can be accomplished through zoning. Such public meetings can provide those responsible for drafting the zoning resolution with a better understanding of what the citizens want and will accept. Such meetings also help to bring zoning into the open. Because public meetings can reach only a limited number of residents, it is also necessary to use additional devices.

   One final point should be stressed about public meetings. It is vital that local officials or residents conduct these meetings. If a planning consultant has been retained to assist in zoning, he should not conduct the meeting. If the consultant conducts the meeting, citizens may resent such direct participation by an "outsider."

2. Literature One method to get information to more people is to develop a brochure that explains why zoning is being proposed, what types of restrictions are involved, what will not be regulated, and where more information can be obtained. At a very reasonable bulk rate, one copy could be mailed to each box-holder in the area. Such a brochure could also answer some of the charges of the opposition, especially when incorrect information is being used. If a pamphlet or brochure is used for this purpose, it should be sent near election day so that the ideas will be recalled by the resident when he votes. Such literature can also be left at bank and store counters to be picked up by customers.

3. Newspaper Articles Articles in daily and weekly newspapers are good methods to reach local residents. County Extension agents or local Farm Bureau public affairs officers may be available to assist in this effort, as may a county or regional planning commission. A question and answer format is one effective way to organize articles.

4. Radio Shows Another effective way to transmit information on rural zoning is to use local radio stations. An interview of zoning commission members is one approach. A more effective radio program would allow local residents to call in questions which would then be answered by the zoning commission.

5. Person-to-Person Contact The best way to inform residents about zoning is on a personal basis. A township can be divided into sections and covered on a door-to-door basis. If this approach is used to explain zoning, care should be taken in choosing individuals who are respected in the area. It is vital also that they know the details of the zoning process.

ZONING AND RELATED LAND USE CONTROLS

INTRODUCTION

Zoning resolutions are only one of several tools that are used to regulate and guide land use and development. Zoning is often confused with the other land use controls which regulate different aspects of development. This chapter will summarize the contents of subdivision regulations, building codes, housing codes and sanitation regulations.

CONTENTS OF A RURAL ZONING RESOLUTION

Few rural areas in Ohio are alike. Many townships have only a few hundred people, while a few have populations exceeding 20,000. Therefore, any model zoning resolution must be modified to meet the local needs of an area. Following is a summary of the contents of typical model regulations. A comparison should be made with existing resolutions, or resolutions proposed for adoption.

Many model regulations are divided into 14 articles and a preamble. The preamble states the intent of the zoning resolution and gives some idea of what the community is trying to accomplish through zoning. With the exception of Article 1, these may appear in various orders.

Article 1, "Title, Interpretation, and Enactment," contains legal necessities that have little bearing on what the resolution does or the way it is administered.

Article 2, "Definitions," lists as many as 100 important zoning terms and their meanings as used in the zoning regulations. Precise definitions are an essential part of any zoning resolution.

Article 3, "Enforcement," requires zoning permits and certificates of occupancy, and establishes the procedures for their issuance. It also specifies penalties for violation of the resolution.

Article 4, "Non-conformities," deals with those lots, structures, and uses of land which were lawful before the zoning resolution was passed, but which do not conform to the new zoning regulations. Non-conformities are declared to be incompatible with permitted uses in the district and their enlargement or expansion is prohibited, although they must be allowed to continue to exist as they were when the zoning resolution was adopted.

Article 5, "Administration," establishes the zoning inspector, the board of zoning appeals and the duties and required procedures of each.

Article 6, "Amendment," details the procedures to be followed in enacting amendments to the zoning resolution.

Article 7, "Provisions for Official Zoning Map," establishes the zoning map as an integral part of the resolution and establishes general rules for the interpretation and location of zoning district boundaries where there is doubt.

Article 8, "Establishment and Purpose of Districts," creates several zoning districts and contains a paragraph for each explaining its purpose. Because model regulations are designed to cover a wide range of jurisdiction, many districts are suggested, although a small township should require no more than 3 to 5. The number and type of districts in each township depend on the size of the township, the nature of its commercial and industrial areas, if any, and the presence of any unusual features such as major recreation facilities or major highway interchanges.

Article 9, "District Regulations," establishes an Official Schedule of District Regulations. In this graphic chart the regulations for each district are listed in a table for easy reference.

Article 10, "Supplemental District Regulations," covers special regulations such as those for swimming pools, vehicle storage, visibility at intersections, and performance standards for commercial and industrial uses.

Article 11, "Off-Street Parking and Loading," contains standard for development of parking and loading areas and establishes specific parking requirements for a variety of residential, commercial and industrial uses.

Article 12, "Signs," regulates the placement, design, size and type of signs.

Article 13, "Planned Unit Development," creates a means of encouraging flexible and innovative development of residential areas. PUD's are large-scale residential developments that may also include subordinate commercial and industrial uses that are compatible with the predominant residential use.

Article 14, "Manufactured Home Parks," contains standards and requirements for the development of such parks.

SUBDIVISION REGULATIONS

While zoning regulates the use to which land may be put, subdivision regulations specify the way in which land is divided, sold and transferred. These regulations also set forth minimum standards for improvements such as grading, width, and construction of roads, and size and quality of water and sewer lines.

In unincorporated areas, subdivision regulations are generally the responsibility of the county or regional planning commission. In addition, all cities have authority to control the subdivision of land within three miles of their corporate boundaries. Also, those villages located in counties that have no cities may control subdivision of land within a mile and a half of the village limits if the county has no subdivision regulations. Under Ohio law, townships are not authorized to control the subdivision of land. A subdivision must conform to the requirements of a township or county zoning resolution if the requirements of the zoning resolution are more stringent. Subdivision regulations are adopted by a county or regional planning commission after required public notice and hearings, but do not require approval at an election as does rural zoning. Prior to requiring the actual

construction of improvements, the regulations must be approved by the County Commissioners. Before subdivision regulations may be enacted, a regional or municipal planning commission must develop and adopt a major road and park plan for the area covered by the regulations.

What is a Subdivision? A subdivision is defined in Section 711.001 of the Ohio Revised Code. Under this definition, subdivision approval by the local planning commission is required in practically all divisions of land EXCEPT when:

1. Parcels of land greater than five acres in area are sold or exchanged and no new streets or easements of access are established.

2. Parcels of land are sold or exchanged between adjoining property owners where additional building sites are not created.

3. Private streets are established serving only industrial structures.

4. Open spaces or easements for public facilities are created.

Types of Subdivisions. The Ohio Revised Code recognizes two different types of subdivisions:

1. Major Subdivisions. This type of subdivision generally involves more than five lots and requires the submission of a record survey plat to a county or regional planning commission for approval.

2. Minor Subdivision or Lot Splits. This type of subdivision generally involves only one or two lots. Section 711.131 of the Ohio Revised Code allows for a less stringent subdivision approval process for these types of land transfers. Subdivision approval may be granted by the director or secretary of a county or regional planning commission without the requirement of a record survey plat if the following conditions are met:

    a. The land is located along an existing road.

    b. The opening, widening, or extension of any road, whether public or private, is not involved.

    c. No more than five lots (after the original tract is completely subdivided) are involved.

    d. The proposal is not contrary to any platting, subdividing, or zoning regulation.

Under the minor subdivision procedure, a land owner may submit a description and sketch of a parcel to the director of the county or regional planning commission for approval. He need not file a preliminary and final plat which requires the approval of the entire planning commission or a duly authorized committee. If the director is satisfied that the proposal conforms to all subdivision requirements, he must approve the "lot split" within seven working days after it is submitted to this office.

Regulation Contents. "Subdivision regulations control the division of land, its transfer, and the improvement of land as development occurs. These regulations primarily control the design, layout, division and improvement of land as it is sold or developed. Planning commissions may adopt subdivision regulations to provide for appropriate arrangement of streets and highways; assure adequate and convenient open space for traffic, utilities, access of fire fighting equipment, light and air; and to prevent congestion of population. As community development pressures increase, effective subdivision regulations are needed to ensure accurate land title records and proper design and development standards. The main objective of these laws is to provide optimum livability for community residents and ensure that the costs of subdivision development do not fall disproportionately upon the general public." (James M. Dowdy, "Local Land Use Planning," Readings on Land Use Planning in Ohio (Columbus: Ohio State University, 1988) p.7.

BUILDING CODES

Building codes regulate structural requirements for new construction. In unincorporated areas, only the County Commissioners may adopt building codes. Section 307.37 of the Ohio Revised Code authorizes County Commissioners to adopt and enforce regulations "pertaining to the erection, construction, repair, alteration, redevelopment and maintenance of single-family, two-family, and three-family dwellings."

The State of Ohio regulates the construction of almost all other types of buildings through the Ohio Basic Building Code. Also, mass produced or industrialized housing units are directly regulated by the Ohio Basic Building Code. The State of Ohio licenses manufacturers of such housing, and local codes may not apply to industrialized units. Agricultural buildings are not regulated by the Ohio Basic Building Code, if the building is to be used exclusively for agricultural operations. If, however, a farmer wishes to open a welding shop, his building must meet Ohio Basic Building Code standards.

While model building codes for one-, two- and three-family dwellings are available from a variety of sources, it is recommended that one contact the Board of Building Standards to receive the most up-to-date information on such codes, in addition to the Ohio Basic Building Code:

Ohio Board of Building Standards
Department of Industrial Relations
P.O. Box 825
2323 W. Fifth Avenue
Columbus, Ohio 43266-0567
(Telephone: 614/644-2613)

Attention should also be given to Sections 3781.06 and 3781.061 of the Revised Code concerning agricultural buildings or structures.

HOUSING CODES

Housing codes, unlike other regulations, may apply retroactively to existing dwelling units. Housing codes can insure proper maintenance of residential structures. Like building codes, housing codes are authorized under Section 307.37, Ohio Revised Code. The major function of a housing code is to correct existing substandard housing conditions and to prevent future deterioration from improper maintenance. The major subjects covered in most housing codes are provisions on minimum required facilities, requirements for structural maintenance, and regulation of occupancy. Again, it is suggested that the Board of Building Standards be contacted to obtain current information on available model codes.

SANITATION REGULATIONS

The control of individual home sewage disposal systems and water supply systems is the responsibility of local boards of health. Section 3709.21 of the Ohio Revised Code allows local health departments to adopt such regulations. Sewage disposal regulations usually require the following types of standards:

1. Minimum depth septic tanks must be located above normal groundwater;

2. Percolation tests or soil suitability standards for on-lot sewage treatment;

3. Minimum lot area requirements for on-lot treatment devises;

4. Septic tank capacity (usually on the basis of the number of bedrooms), leach bed area and minimum required linear feet of trench;

5. Minimum distances the septic tank and leach bed must be separated from a well or property line;

6. Provisions relating to the periodic maintenance of on-lot sewage treatment devices.

Other water and sewage regulations are enforced by the State of Ohio through the Department of Health and the Environmental Protection Agency. These agencies must approve water and sewer facilities for commercial facilities. They also regulate the design and related water supply and sewage disposal aspects of manufactured home parks and campgrounds.

THE TOWNSHIP TRUSTEES AND THE COUNTY COMMISSIONERS

The Township Trustees and County Commissioners have a limited but essential function in relation to zoning: enacting and amending rural zoning resolutions. They, more than anyone else associated with zoning, are directly responsible to local residents. These officials are usually well respected in their communities, and are often leaders of public opinion. If zoning is going to be effective, their active interest and support is vital. Zoning that is not supported by the Township Trustees or County Commissioners will probably never attain its potential.

It is the Township Trustees or County Commissioners who initiate the rural zoning process by adopting a resolution declaring their intention to proceed with zoning. Next, they appoint the zoning commission who prepares the zoning text and map. The following section discusses the specific responsibilities of the legislative authority.

1. Appointment of Officials The Township Trustees or County Commissioners appoint all administrative officials. They must appoint the zoning inspector and any required assistants, the zoning commission, and the board of zoning appeals. Great care must be taken in making these appointments, for the effectiveness of zoning relies on good administrative personnel as much as it depends on a well-prepared zoning text and map.

2. Initiation of Amendments It is often overlooked that the Township Trustees or County Commissioners can and should propose zoning text and map changes. They may not simply enact such proposals into law, however. They must first send their proposal to the zoning commission for a recommendation.

3. Decision on All Amendments Final action on all amendments is the most important function of the legislative authority. They may not take final action until they receive a recommendation from the zoning commission; if they act counter to the recommendation, the vote on such a change must be unanimous. Any amendment approved by the Township Trustees or County Commissioners becomes effective 30 days after adoption unless local residents submit a petition, signed by eight percent of the total vote cast in the last gubernatorial election, requesting the submission of the matter to the electors at a primary or general election. If such a petition is received and verified, the amendment will not become effective until a majority of the vote cast in the township is in favor of the amendment.

4. Establishment of Fees The Township Trustees or County Commissioners have the authority to establish fees for issuing permits, conducting inspections and similar activities. Fees may also be required as a part of applications for variances, conditional uses, and other zoning actions requiring postage, legal advertising, investigations and general processing of applications. A fee is intended to help establish the administration of zoning as a self-supporting governmental service.

As long as the fee bears a reasonable relationship to the costs involved, it will usually be held valid.

5. Repeal of Zoning Resolution The Township Trustees or County Commissioners have the authority to initiate action to repeal rural zoning by adopting a resolution providing that the question be decided by the residents at the next primary or general election. If the County Commissioners take such action, they must adopt a resolution for each township for which they desire to submit the repeal question to the residents. The Township Trustees or County Commissioners are required to adopt a resolution submitting the question of repeal to the voters if they are presented with a petition bearing the signature of eight percent of the vote for governor in the most recent election.

DUTIES OF ZONING COMMISSION

The zoning commission is appointed by the Township Trustees for township zoning or by the County Commissioners for county zoning. The commission is composed of five residents of the unincorporated area of the township for township zoning or the county for county zoning. The members are appointed for five year terms except for the first zoning commission that is appointed. In this case, one member is appointed for one year, another member for two years, the next member for three years, another resident for a term of four years, and the final member for five years. Staggering the terms of zoning commission members allows for a new member each year. This method of appointment is also desirable because it insures that there are always experienced zoning commission members.

Depending on the degree of urbanization in the area zoned, a job on the zoning commission may take a considerable amount of time and work. Since zoning commission members are not paid, before any resident should accept an appointment, he should be sure he has the time and interest to actively participate. Essentially, the zoning commission has three principal duties.

1. Preparation of the Zoning Resolution As was stated elsewhere, it is the primary duty of the zoning commission to prepare the zoning resolution, both text and map. Once the zoning resolution has been completed to the satisfaction of the zoning commission, it holds a public hearing on the proposal and sends its recommended plan of zoning to the Township Trustees or County Commissioners. The zoning commission's function is only an advisory one to the Township Trustees or County Commissioners.

2. Initiation of Amendments One of the major responsibilities of the zoning commission is to propose amendments to the zoning text and map as the need arises. It may be found that some of the requirements of the original zoning resolution were too strict and should be modified. On the other hand, some of the requirements that were originally adequate may have to be changed. It is also possible that new zoning districts will be required because of the construction of a new highway, reservoir, or other facility. Zoning must not be static, but must change with the times. The zoning commission should be ready to propose changes to the zoning resolution that, in the long run, will be of the greatest benefit to the residents. These changes should also be fair and responsive to the needs of the larger region of which the individual county or township is only a small part.

3. Make Formal Recommendation on All Amendments On those amendments that are initiated by the Township Trustees or County Commissioners or those that are requested by property owners, it is the responsibility of the zoning commission to make a formal recommendation to the Township Trustees or County Commissioners.

   Before making a recommendation, the zoning commission must receive advice from the county or regional planning commission and must hold a public hearing on the proposed amendment.

Although the zoning commission only makes a recommendation to the Township Trustees or County Commissioners of what action to take, considerable weight is attached to the recommendation. If the Township Trustees or County Commissioners wish to overrule or modify the recommendation, the unanimous agreement of the Township Trustees or County Commissioners is necessary.

Again, it should be stressed that the zoning commission is only an advisory body to the Township Trustees or County Commissioners. The courts have found that any attempt to delegate to or allow the zoning commission to amend the zoning resolution itself is contrary to the law.

Finally, the zoning commission should be involved in or informed of planning activities in their county and region. (A member of a county or regional planning commission may also be a member of the zoning commission.) An understanding of the needs of the larger region is particularly helpful for rural areas close to large cities in Ohio. Rural zoning should be used as a tool to insure that growth takes place in a balanced and orderly manner, but should not be used to prohibit all growth or change.

THE ZONING INSPECTOR

The most important individual in the entire rural zoning system is the zoning inspector. His job is the day-to-day administration of the zoning resolution. The zoning inspector should have a thorough knowledge of the zoning text and map. He must be able to communicate well and explain in simple terms the often technical provisions of a zoning resolution. He should make every effort to help people solve problems. He must always be courteous and helpful, but his foremost responsibility is the fair and effective enforcement of the zoning resolution.

The zoning inspector is appointed by the Township Trustees to administer township zoning or by the County Commissioners to administer county zoning. The township clerk may be appointed zoning inspector, and may receive compensation for performing this additional service. It is more desirable, however, to retain a person whose only function is zoning administration. A township zoning inspector need not be a resident of the township. It is recommended that, where township zoning is in effect, several townships combine resources and hire the same zoning inspector. Township zoning inspectors are required to post a bond as specified in Ohio Revised Code Section 519.161.

LIMITATION OF AUTHORITY

The zoning inspector is only an administrative official. It is his primary responsibility to enforce the zoning resolution as it exists. It is not proper for the zoning inspector to make exceptions to the requirements of the zoning resolution or to approve variances. This is a function for only the board of zoning appeals.

The zoning inspector may approve an application only if it conforms to all the requirements of the zoning resolution. For example, if an applicant applied for a permit to build a house in a district requiring a 35-foot front setback, but he proposed to set his house back only 33 feet, the zoning inspector must deny the application even though two feet is a very small difference. Such a variation could only be approved by the board of zoning appeals.

In summary, the zoning inspector has authority only to enforce the zoning resolution and apply the letter of the law. He is not permitted to make discretionary judgments.

SPECIFIC DUTIES

As the primary administrative official, the zoning inspector should conduct a variety of activities. Following is a list and explanation of these duties. Again, it should be stressed that the zoning inspector is charged with the literal enforcement of the zoning resolution, and should not attempt to change or interpret it to conform with his personal ideas.

1. REVIEW APPLICATIONS FOR ZONING PERMITS The zoning inspector should review all applications for zoning permits. The Ohio Revised Code specifies that no person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any buildings or structure without first obtaining a zoning permit. If the application conforms to all the requirements of the zoning resolution, the permit should be approved. If, however, the application does not conform to all requirements of the resolution, he should inform the applicant specifically how the request does not conform to the requirements. If the applicant does not make the required changes, the zoning inspector should deny the application, and explain in writing why the application was denied. The zoning inspector should also inform the applicant of the right to appeal his decision or to request a variance from the board of zoning appeals.

2. ON-SITE INSPECTIONS The zoning inspector should also periodically conduct on-site inspections after the zoning permit is approved. This is the only way to assure that the actual construction will conform to the approved application. It is especially important to conduct site inspections before substantial construction has been completed. Once construction has begun, correcting violations becomes very expensive to the property owner. Some resolutions specify that, after the completion of construction, the use cannot be occupied until a certificate of occupancy is issued which insures that the building was constructed as stated in the application for the zoning permit. Such a requirement is encouraged; however, periodic inspections are still useful. An inspection early in the construction process could save a well-meaning but confused property owner considerable money.

3. INVESTIGATION OF VIOLATIONS It is desirable for the zoning inspector to periodically tour the area of his jurisdiction to see if any violations are taking place or land use changes occurring without approved zoning permits. This is especially important in areas where zoning has been recently enacted and people may not yet be aware of the permit requirements.

   Local residents often inform the zoning inspector of violations. In such cases, the zoning inspector should require all complaints concerning zoning violations to be filed in writing. The purpose of requiring that complaints be submitted in writing is to minimize the number of frivolous or unfounded complaints arising out of personal disputes. Persons who take the time to file a written complaint will usually have some basis for their charges.

   When a violation is detected, a written notice should be sent to the violator by the zoning inspector. The notice should explain the nature of the violation and request that the violation be corrected within a specified time period. The notice should also state that failure to comply with the notice will make the owner subject to the penalty provisions in the zoning resolution. If the notices are ignored, the county prosecutor should be contacted to initiate legal proceedings. Ohio Revised Code Sections 303.99 and 519.99 provide for a $100 penalty for the violation of a zoning resolution. Many zoning resolutions include a statement that each day the violation continues, following notification of the violation, shall be considered as a separate offense.

A complete and accurate recording of actions taken in connection with all violations should be maintained. This should include records of all correspondence, date of notification and dates of inspection. Accurate records will be necessary if court action is required, and, without accurate records, the chances of a favorable decision are lessened.

4. MAINTAIN A RECORD OF NON-CONFORMING USES In addition to keeping day-to-day records, it is a worthwhile although difficult task to keep an inventory of all non-conforming uses. Failure to have such a list or map may encourage a continual debate about the location and extent of non-conforming uses and whether they were established before or after the effective date of the resolution. The map should be dated and signed by those persons who witnessed the non-conforming use. Ideally, an original non-conforming use map should be made at the time of the adoption of zoning.

5. MAINTAIN UP-TO-DATE ZONING TEXT AND MAP In many areas the zoning inspector has the responsibility to maintain an up-to-date zoning text and map. It is essential that both are current so that the residents can be aware of existing requirements. It is a good idea to have both available to the public at a cost which will offset reproduction expenses.

6. PROPOSE AMENDMENTS The zoning inspector will often be the first to recognize errors in drafting a zoning resolution. If he finds errors, or if he should find constantly recurring problems, he should inform the zoning commission and County Commissioners or Township Trustees who may initiate amendments.

7. REVIEW SUBDIVISION PLATS The zoning inspector should review all subdivision plats which are submitted to the county or regional planning commission for approval. If there are violations of the zoning resolution, he should inform the county or regional planning commission immediately. The plat should not be approved until all zoning requirements are met.

8. COOPERATION WITH COUNTY AUDITOR In some counties, it may be desirable for the zoning inspector to send a copy of each approved zoning permit to the County Auditor. Where the county has no building permit program, the zoning permit could help maintain up-to-date tax records.

A zoning inspector should be carefully chosen. Zoning is only as good as its enforcement. Without a good zoning inspector, good enforcement is virtually impossible.

BOARD OF ZONING APPEALS

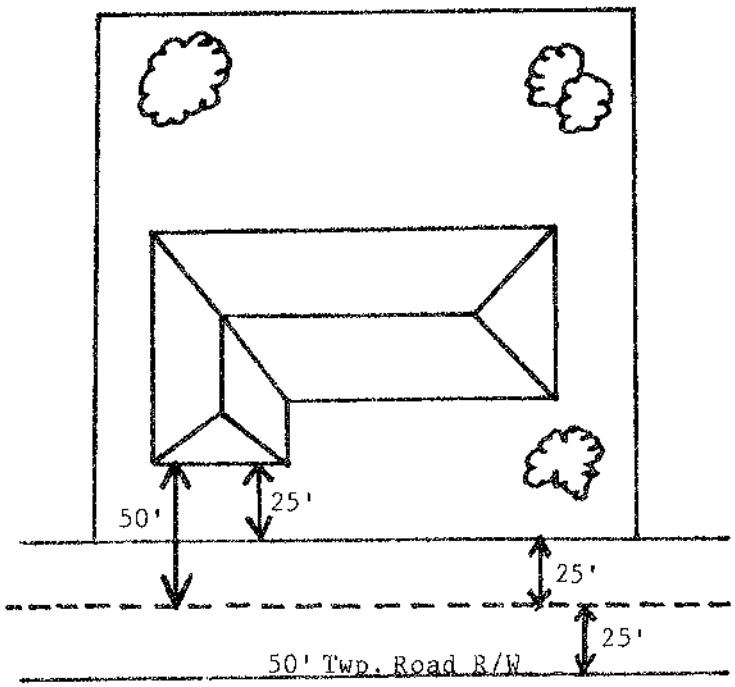
A township board of zoning appeals is composed of five members who must be residents of the unincorporated area of the township. Their terms of office are arranged so that one member will be appointed every year. A county board of zoning appeals is appointed by the County Commissioners and also consists of five members. When a county zoning plan involves more than two townships, no more that two of the members may be from any one township.

The county prosecutor is required to serve as legal advisor to the township or county boards of zoning appeals (1955 OAG 4893). He is required to advise the board on matters pertaining to the exercise of its administrative functions and to those decisions the law authorizes the board to make. His advice does not include factual or policy determinations.

The board of zoning appeals serves in the capacity of a "judicial branch" of zoning administration, but it is technically an administrative body. The board of zoning appeals is permitted to exercise only three functions by the Ohio Revised Code: appeals, variances, and conditional uses.

ACTION ON APPEALS Any applicant has the right to appeal a decision of the zoning inspector. A zoning resolution is complicated and often technical. A property owner and the zoning inspector may read the same requirement of the zoning resolution and come to different conclusions on the way it applies to a particular piece of property. The zoning inspector can only approve a zoning permit if the application conforms to all the requirements of the zoning resolution as he understands them. However, any applicant has the right to appeal his decision.

The following diagram illustrates a case wherein an applicant might appeal the decision of the zoning inspector concerning location of a front lot line.



In many rural areas, lots often run to the center of township, county and state roads. An applicant, who owns a 20,000 square foot lot in a residential district, applies for a zoning permit to build a house. The lot conforms to all the requirements of the zoning resolution; however, a question arises as to the front yard setback requirement. The front yard requirement for the district specifies that the house must be located no closer than 50 feet from the front lot line. This is where the problem arises. What is the front lot line? In this case the front lot line is also the center line of the road. It seems logical that the house should be set back from the right-of-way line and not the center line, although the applicant desire to set back 50 feet from the center line. The zoning inspector maintains that the 50 foot setback must be measured from the road right-of-way line. Such a difference in understanding the zoning resolution should be referred to the board of zoning appeals for an interpretation. This type of a problem should not arise because key terms like "front yard setback" should be adequately defined to avoid such problems.

It should also be pointed out that appeals can also be taken by others than those simply applying for permits. For example, a neighbor may appeal the decision of the zoning inspector, claiming that the inspector issued a permit for a use not permitted by the zoning resolution, or that the approved permit did not conform with all the zoning requirements. Other interested local officials such as the County Commissioners, Township Trustees or the county engineer may also appeal a decision of the zoning inspector if they thought the inspector was in error.

ACTION ON REQUEST FOR VARIANCES A variance is a type of appeal, since zoning procedures require that the applicant must first go to the zoning inspector with an application for a zoning permit. When an inspector disapproves an application, the applicant may then file a request with the board of zoning appeals for a variance from the strict application of the zoning resolution as it applies to his property. Courts have often dismissed appeals from a board of zoning appeals decision where an application has not been first rejected by the inspector. The board of zoning appeals has no authority to rule on variances except on an appeal basis.

The issuance of variances is perhaps the single most abused zoning power. Improperly granted variances can easily destroy the protection of a zoning resolution; they can also erode the credibility both of zoning as a land use control and of local officials as administrators of that control. One problem with variances is that provisions in many zoning resolutions are too general and contain no definite standards or conditions which may be applied in specific cases to particular parcels of property. The board of zoning appeals must hear and decide applications for variances where, due to special conditions, a literal enforcement of the requirements of the zoning resolution would result in an unnecessary hardship. The existence of an unnecessary hardship is often difficult to determine; however, the hardship must be proven before the board can grant a variance.

Through an extensive series of court cases, a set of tests has evolved to determine the presence of unnecessary hardships. These are the kinds of standards that ought to be incorporated into any zoning resolution dealing with variances.

1. The courts have ruled that the required use must remove all profitable use from the land, or in other words, the applicant's supposed hardship cannot be one of economics alone. For instance, a variance should not be granted to allow construction of a service station in order that the property owner can sell the land for a higher price than he could with the existing residential zoning.

2. The hardship must result from circumstances affecting a particular and unique piece of land, and not from a general condition throughout the neighborhood. For instance, the owner of a residentially zoned parcel adjacent to a commercial zone might apply for a variance to permit a service station on the grounds that a nearby commercial area made his parcel unfit for residential use. The application should be denied on the basis that any hardship is common to the entire area and not just to the applicant's property. The hardship must be unique and not general. In this case, proper remedy was a rezoning through the regular amendment procedure.

3. A variance must not alter the essential character of a neighborhood.

4. It is not enough to show that the effects of a variance would be harmless. Real, unnecessary hardship must still be established by the applicant.

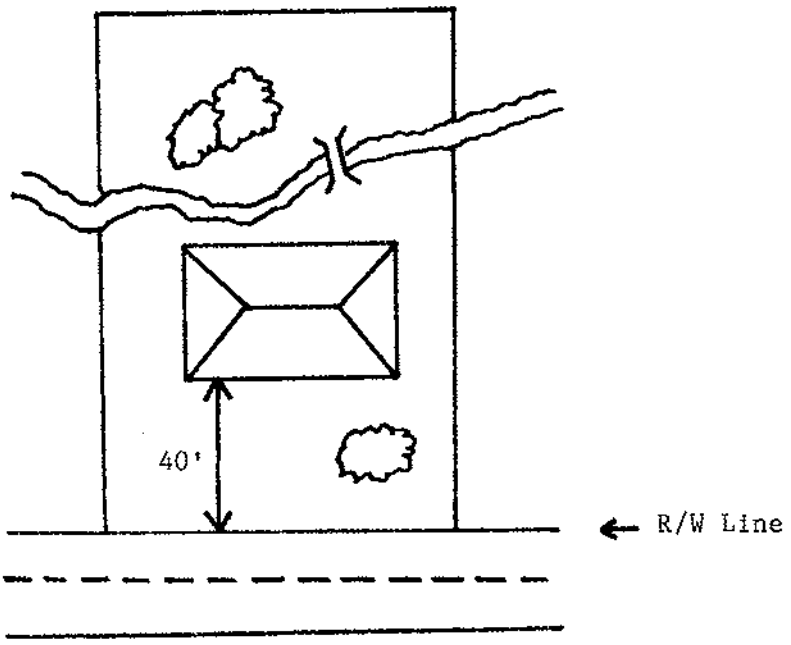
5. Any hardship must result from the requirements of the zoning resolution and not from the applicant's own actions. For instance, a variance request is properly denied when the applicant knowingly bought a piece of land too small for his intended use of the land.

6. A variance must not be contrary to the public interest, even if a hardship can be established.

Finally, and probably most important, the board of zoning appeals must not grant a variance that would permit a use otherwise prohibited from the zoning district. Hardship must involve the way land is to be used in terms of required yards, height, density, parking, etc., and not the use of the land itself. A use variance is in reality a change in the zoning district shown on the zoning map and not a minor relief of some hardship. Zoning district changes are the sole responsibility of the Township Trustee or the County Commissioners after receiving recommendations from the township or county zoning commission and the county or regional planning commission. The board of zoning appeals cannot make map changes through use variances. A sample use variance restriction could read, "Under no circumstances shall the board of zoning appeals grant a variance which will permit a use which is not permitted in the use district involved."

One of the clearest and strongest judicial statements on use variances came in a 1969 case in Scioto County, where a board of zoning appeals granted a use variance to allow a dental office in a residential zone. In overturning the board ruling, the court noted that the variance "would in effect constitute an amendment to the use provisions of the (resolution), which is a function exclusively of the legislative authority," or in the case of rural zoning, the Township Trustees or the County Commissioners (re: Zoning Variance of Gillen, 255 N.E. 2d 303, 1969).

An example of a justified variance is shown in the following diagram.



In this case a stream crosses a lot. The zoning resolution requires that the house be set back at least 50 feet from the right-of-way line. Due to the location of the stream, however, it is impossible for the applicant to meet this requirement. In such a case, a variance would probably be justified which would allow the owner to establish only a 40 foot or other lesser front yard setback.

ACTION ON CONDITIONAL USES While appeals and variances come to the board of zoning appeals only after the zoning inspector has refused to issue a zoning permit, applications for conditional use permits come to the board of zoning appeals directly from the applicant.

Conditional uses possess unique or special characteristics relating to location, design, size, traffic generation, and method of operation. Because of these characteristics, each use is considered on an individual basis. The conditions which dictate the issuance of the permit are usually directed toward minimizing possible detrimental effects of the proposed use on the character, value, and development of the adjacent area. It is necessary to have requirements for conditional uses that are an explicit part of the zoning resolution.

The conditions required to protect and preserve the character of the area and to promote the public health, safety and welfare can vary with each conditional use and its resulting effect on surrounding development.

Specific conditions may include requirements for a greater amount of open space, the location of entrance or exit drives, special lighting, noise control requirements, and fencing or landscaping. A given conditional use is permitted only in those districts so specified. The board of zoning appeals is responsible only for judging compliance with conditions established by the Township Trustees or County Commissioners. The board of zoning appeals does not determine what conditions must be met. This is a legislative action which is reserved for the Township Trustees or County Commissioners. If all conditions are met by the applicant, the board of zoning appeals must issue a permit. If the conditions are not met, the board may not issue the permit.

A zoning resolution should contain both general and specific standards for conditional uses. General standards are largely statements of intent and should govern the general concerns of the board of zoning appeals in making all conditional use decisions. General standards address such issues as the relationship of the proposed conditional use to the comprehensive plan and character of the area; the availability of essential public facilities and services; the economic welfare of the area; the likelihood that the use will generate excessive traffic, noise, or air pollution; and other similar characteristics.

In addition to the general standards for all conditional uses specified above, each zoning resolution should contain some specific criteria for each conditionally permitted use. For example, a sand and gravel or limestone quarry operation may be a conditionally permitted use in an agricultural district and a manufacturing district. In order to receive a conditional zoning permit, the applicant must conform to both the general standards applicable to all conditional uses and the more specific standards designed to apply to mineral extraction. These specific criteria might include requiring the quarry to be enclosed by a fence, prohibiting operation within a certain distance of existing residential structures, requiring certain types of land restoration, and limiting hours of operation.

It is important to specify the design or performance standards of each individual conditional use. Standards that are too general may allow the board of zoning appeals to exercise too much discretion. The decision of the board of zoning appeals should be made within definable standards, and the more specific the drafters of the resolution are, the easier is the job for the board of zoning appeals.

PROCEDURE

Appeals to the board of zoning appeals may be taken by an citizen or by an officer of the county or township affected by any decision of the zoning inspector. The appeal must be filed within twenty days after the decision of the zoning inspector. The inspector must send the board of zoning appeals all records relating to the case.

The procedure for hearing an appeal, variance or conditional use application is specified in the Ohio Revised Code (ORC 303.15 and 519.15). Following is a brief summary of the major steps required:

1. The board of zoning appeals schedules a public hearing within a "reasonable time." It is recommended the public hearing be held within 20 days from the date the application is filed.

2. The board of zoning appeals sends a notice of public hearing to "parties in interest" at least 10 days before the public hearing. All property owners in the general vicinity that might be affected by the decision should be notified. It is always better to notify too many citizens than to omit anyone accidently.

3. The board of zoning appeals publishes a notice of public hearing in a newspaper of general circulation at least 10 days before the hearing.

4. The board of zoning appeals makes a decision within a "reasonable time." It is recommended the decision be made within 20 days of the date of the hearing.

It is important that these procedures be exactly followed. If, for example, the board of zoning appeals refuses to approve a request for a variance, the applicant's only recourse is to the Court of Common Pleas. It is often assumed that an appeal from the board of zoning appeals may be taken to the Township Trustees or County Commissioners. This is not proper procedure. The Township Trustees or County Commissioners have no authority to hear appeals, variances or conditional uses. They are solely a legislative body. An appeal from the board of zoning appeals must be made to the Court of Common Pleas.

ZONING AMENDMENTS

Zoning amendments are the most important changes in any zoning program. Because no area is static, it must be expected that the zoning resolution will have to be amended. Zoning that does not change is probably not responsive to the needs of the area and region. As a general rule, it is desirable to undertake a complete evaluation of the resolution every five years, taking into consideration operational experience, the difficulties encountered by enforcement officials, changing zoning principles and techniques, and unforeseen factors in the development of an area.

COMMON PROBLEMS WITH RURAL ZONING RESOLUTIONS

Many zoning resolutions in Ohio are outdated. The County Commissioners Association, the Township Trustees Association, and county and regional planning commissions are available to assist rural areas in evaluating existing zoning resolutions. Zoning has changed greatly in the last twenty years. If a local zoning resolution has not been recently evaluated, it might be well to compare it with a more recent zoning resolution. Zoning, however, should not be copied from a model or from the zoning resolution of an adjacent area. It should be tailored to meet local needs.

Some of the most common defects found in zoning resolutions are listed below:

1. The resolution is not based on a county comprehensive plan, and its objectives have never been clearly defined. Consequently, individual provisions work at cross-purposes and hinder many kinds of development.

2. The resolution is poorly organized and difficult to use. It is imprecise in dealing with specific situations, allowing undue latitude for interpretation by the zoning inspector and board of zoning appeals. The resolution is either poorly indexed, or not indexed at all.

3. Too much land is zoned for such uses as business and industry. This "over-zoning" of land does not reflect the real or potential needs of the area for such uses.

4. Amendments which give special treatment to a favored few are known as "spot zoning," and are often invalidated by the courts. Any amendment not based on community or neighborhood-wide considerations may fall under this definition. The danger is especially great where the amendment affects only one or two properties.

5. Many resolutions still employ cumulative zoning districts where all uses permitted in residential districts are permitted in commercial districts, and all uses permitted in commercial districts are permitted in industrial districts. This results in all uses being permitted in industrial districts. Good industrial zoning prohibits housing in industrial districts. Clearly, industrial districts should not be areas where all unwanted uses are permitted.

6. Excessive frontages are zoned for various types of land uses. A common practice is to zone all the land 200 or 300 feet deep on both sides of the road for either residential or commercial uses. This will promote strip development which encourages traffic conflicts, and may increase the overall cost of water and sewer service.

7. Wide differences in the zoning of opposite sides of the same street are common, such as industrial or business districts opposite residential districts, when not justified by unusual physical conditions.

8. Intersections often mix residential, business, or industrial zoning.

9. Extreme differences between adjoining zoning districts should be avoided, such as heavy industrial zones abutting single family residential districts.

10. There are no provisions for off-street parking and loading areas for residential, commercial, or industrial uses, or the provisions are grossly inadequate.

11. Manufactured homes or manufactured home parks are completely excluded.

12. Excessive minimum lot widths and areas in residential districts are required, especially where adequate water and sewer facilities are available. Excessive requirements can have the effect of increasing the cost of housing beyond the capability of many persons in the region.

TYPES OF AMENDMENTS

There are two kinds of amendments: changes in the zoning text, and changes in the zoning map (or district changes). District changes are generally the more common type of amendment. After a zoning resolution has been approved at an election, a new resolution can be enacted as an amendment to the original one.

Once the zoning resolution is adopted, the burden of proof for any future changes should rest with the applicant. If a real need can be demonstrated that will benefit the entire area, as well as the adjacent areas and the property involved, the change should be approved. If such a need cannot be demonstrated by the applicant, then the proposed change should be rejected. Zoning, however, should not be used as a method to reject any and all proposed changes.

A proposed district change should be considered in light of all uses permitted in that zone. Once the land is rezoned, any use permitted in the district can be located in the district. Many applicants state how they propose to use their land if it is rezoned. Such information may be helpful to the zoning commission in considering a district change, but land should not be rezoned entirely because of specific plans by the applicant. The applicant may sell the land, and the new owner may have a different, and unexpected, idea.

Some areas have found that so-called "understandings" between an applicant and township or county are not always similarly understood. It is also bad practice to rezone land specifying that it is being rezoned with certain conditions attached. This is referred to as "contract zoning," and many courts have found it illegal.

STANDARDS FOR AMENDMENTS

Each amendment should be carefully considered, keeping in mind the fact that the burden of proof of the need for the change rests with the applicant. The following questions should be asked when considering district changes.

1. Is there some property in the area already zoned to accommodate this use? If there is a considerable amount of land zoned for the requested purpose, and if little of it is being used, the need to rezone more land should be carefully analyzed. The fact that the cost of the land already zoned may be more expensive does not mean that the township or county should rezone more land.

2. What other effects might the adoption of the proposed amendment have on future land uses in the area? What will be the long-term effects of the proposed change?

3. How does the proposed change relate to existing public facilities and services such as water, sewer, police and fire protection, and schools?

4. What is the present character of the area in terms of existing land use and physical characteristics? Do the physical characteristics therein cause problems for development?

5. What are the factors that make this location well suited for the uses permitted in the proposed zoning district?

6. Would all of the permitted uses in the proposed district be compatible with the existing and potential future development in the area?

7. What effect would the rezoning have on property values?

8. Would the rezoning cause a considerable increase in the volume of traffic? Can existing roads accommodate this traffic?

If the zoning commission and Township Trustees or County Commissioners are satisfied that the proposed change is sound, they should next consider the size and shape of the area to be rezoned and where the zoning boundaries should be located. When considering the size of the area to be rezoned the following questions should be asked.

1. Does the area proposed for rezoning reflect land needed for the purposed use or does it merely reflect the applicant's property lines?

2. Is the size of the parcel adequate to meet building setback, parking and loading, and open space requirements?

3. Is there a physical feature such as a river, railroad, or hill that can be used as a natural dividing line to separate a new district from adjacent properties?

4. Will future requests for additional rezonings be stimulated by the present request? If so, where is the logical boundary of the new zone?

The remainder of this chapter deals with the procedure required by the Ohio Revised Code for amendments. Appendices A and B contain Chapters 303 and 519 of the Ohio Revised Code in their entirety. Appendix C contains a zoning amendment checklist which may be helpful.

PROCEDURE

1. Initiation of Amendments Amendments may be started in three different ways:

   a. The zoning commission may propose an amendment.

   b. The Township Trustees or County Commissioners may propose an amendment and send their proposal to the zoning commission for a recommendation.

   c. A property owner may propose an amendment and submit an application form.

2. Submission to County or Regional Planning Commission Within five days, the zoning commission must submit the proposed amendment to the county or regional planning commission. The planning commission makes its recommendation to the zoning commission, which is considered at the public hearing held by the zoning commission.

3. Submission to State Transportation Director Section 5511.01 of the Ohio Revised Code requires that before any zoning amendment is approved affecting land within 300 feet of a proposed new highway for which changes are proposed, or within a radius of 500 feet from the point on intersection of the proposed change with any public road, the Director of the Ohio Department of Transportation must first be notified and given 120 days to respond. The zoning commission should proceed with its hearing and approval but the Trustees or Commissioners cannot take final action on the amendment until the Director notifies them concerning his intentions to acquire the land. If the Director initiates proceedings to acquire the necessary right-of-way, the Township Trustees or County Commissioners must refuse to approve the rezoning. If he is not going to initiate proceedings to acquire the land, the Trustees or Commissioners proceed normally.

4. Public Hearing by Zoning Commission The zoning commission must hold a public hearing on the proposed amendment not less than 20 nor more than 40 days from receipt of the amendment.

5. Notice of Public Hearing in Newspaper The zoning commission must publish a notice of the public hearing in a newspaper at least 10 days prior to the public hearing.

6. Notice to Property Owners by the Zoning Commission If the amendment proposes to rezone 10 or fewer parcels of land, a written notice of the public hearing must be sent to all property owners within, contiguous to, and directly across the road from the land to be rezoned. This notice must be sent at least 10 days before the hearing is held.

7. Recommendation by Zoning Commission The zoning commission must, within 30 days after the hearing, make a recommendation to the Township Trustees or County Commissioners. They must also submit the recommendation received from the county or regional planning commission.

8. Public Hearing by Trustees or Commissioners After receiving the recommendation from the zoning commission, the Township Trustees or County Commissioners must hold a public hearing within 30 days.

9. Notice of Public Hearing in Newspaper The Township Trustees or County Commissioners must publish a notice of the public hearing in a newspaper at least 10 days before the date of the hearing.

10. Action by Trustees or Commissioners The Township Trustees or County Commissioners must make their decisions within 20 days after their public hearing. If they wish to deny or modify the recommendation of the zoning commission, a unanimous vote is required.

One 1968 court case relating to this procedure found that, if the County Commissioners did not act within 20 days after their public hearing, their lack of action would not constitute automatic approval of a favorable recommendation by the zoning commission. Another case stated that, when only two County Commissioners were present at a meeting which was to consider action on a proposed amendment, the affirmative vote of the two Commissioners present was sufficient to meet the requirement of unanimity to overrule the recommendation of the planning commission. (Seyler vs. Balsly, 210 N.E. 2d 747, 1965).

The above is a simple summary of the steps to be followed in amending the zoning resolution. If the amendment is adopted by the Township Trustees or County Commissioners, it does not become effective for 30 days. During this 30-day period, the residents of the area have the opportunity to petition the Township Trustees or County Commissioners for relief. This is done by submitting a petition signed by area residents whose number equals at least 8 percent of the total votes cast for all gubernatorial candidates in the last election for Governor. Such a petition requires the amendment in question to be submitted to the residents for approval or rejection at the next primary or general election. Under these circumstances, the amendment cannot take effect until at least a majority vote has approved the proposed amendment.

ZONING DISTRICTS AND ZONING MISCELLANY

ZONING DISTRICTS

A great deal of emphasis has been given in this handbook to proper administrative procedures and duties, since questions concerning administration are the ones most often asked by rural zoning officials. Zoning officials have also found, to their dismay, that many court cases have been lost because of inattention to proper administration procedures.

However, there are other topics that should also be included in the handbook. This chapter discusses a variety of zoning districts, including agricultural, residential, business and manufacturing districts. Also examined are planned unit developments and special purpose districts for flood plains and airports. Short discussions of non-conformities, annexation as it relates to zoning, zoning maps, and public hearings are also presented. Finally, rural zoning officials are urged to review their regulations for effects on the cost of housing and resulting exclusionary tendencies.

The number and purpose of districts will vary for each township or county according to the unique circumstances to be found in the area. Although the sections of zoning resolutions concerning the board of appeals or amendments could easily be standardized, the number and type of districts must be designed to "fit" the individual township or county. For example, freeway interchanges, recreation or second home developments, spreading urbanization, and mineral extraction all require special attention in a zoning resolution. A resolution in the agriculturally-rich areas of Northeast Ohio should treat agricultural areas differently than the rocky areas of Southeast Ohio. Areas which adopt an agricultural land policy as discussed earlier should reflect this policy in zoning districts which are markedly different from districts in an area which is consciously seeking non-farm development. An area with one or more population centers such as unincorporated hamlets or crossroads settlements should have differently designed residential and commercial districts than an area without such centers.

AGRICULTURAL DISTRICTS Agricultural or rural residences represent the vast majority of all land covered by county or township zoning. The design of these districts is affected by the factors mentioned above and/or locally adopted policies. The districts can be drawn to protect and preserve agricultural lands to the virtual exclusion of non-farm residences, at one extreme, or drawn to accommodate suburban-type residential development with agriculture merely filling the empty spaces, on the other. As noted earlier, agriculture must be permitted in all zoning districts.

In designing agricultural districts, local officials should be aware of potential conflicts between farm and non-farm residences. A statement by the New Jersey Farm Bureau pinpoints the sources of conflict:

> Often to the "suburbanites" surprise they find that their new neighbor-farmers make loud noises with their diesel tractors early in the morning; require noisy engines to pump water for irrigation; spray pesticides and herbicides on their lands, quite often from aircraft; produce livestock that has not been housebroken; require seasonal housing for seasonal labor; and in general carry on practices that are not in harmony with their preconceived ideas of the bucolic life in the country.

The potential for conflict is further demonstrated by a Southwestern Ohio farmer whose hog operation was declared a nuisance and put out of business by a court decision brought by his newly-arrived, non-farmer neighbors. A properly conceived zoning resolution can protect farmers from non-farm intrusions as surely and as vigorously as it can protect residential areas from commercial or industrial intrusions.

A further consideration in agricultural zoning is the preservation of prime agricultural lands. For various reasons, land best suited for farming is usually also well suited for residential development. In spite of increased productivity, cropland in the United States needs to be expanded if we are to feed both ourselves and substantial portions of the world market. This concern was reflected in the Ohio General Assembly's passage of so-called "Agricultural District Legislation" in 1982 (see ORC Chapter 929), which was amended a second time in 1986. Under this law, an owner of a parcel of land which meets criteria specified in the law may place the land in an agricultural district, following procedures stipulated in the legislation. Land placed in such an agricultural district is exempt from the collection of any assessment against such property for sewer, water, or electrical service improvements, until such time as the land no longer qualifies for agricultural district designation. It is important to note that the designation of land as being in an agricultural district of this type has nothing to do with zoning. An owner's property may lie within a district zoned for residential use (a zoning district as used in this chapter), but, so long as it is in agricultural use and qualifies according to the criteria set forth in this law, it may be placed in an agricultural district as described by this law (which is not a zoning district). Similarly, an eligible parcel may be placed in this type of agricultural district in a rural area where no zoning exists.

RESIDENTIAL DISTRICTS While a small township may need no more than one or two residential districts, a large city could have a dozen or more with densities ranging from an acre or more per dwelling unit to as little as 500 square feet per dwelling unit in high-rise apartment buildings.

Many of the same considerations in designing agricultural districts also apply to residential districts. If applied to large portions of the jurisdiction or indiscriminately applied whenever a landowner petitions for a change, agricultural operations will be significantly hampered. If residential development is allowed only in certain areas or concentrated around existing development, costs of the extension of utilities and services will be lessened. At the same time, if lots of one-quarter acre or smaller are concentrated near existing development, lower improvement costs will result because of shorter runs for streets and utility lines.

Also, residential districts should relate directly to land use plans and community goals, objectives, and policies. Statements of intent and purpose may be very important in litigation on zoning regulations. Some of the aspects that should be considered in establishing residential districts are listed below.

1. DENSITY Densities will vary according to the area and its location in a metropolitan region. Density requirements should be related to a comprehensive plan, capability for on-lot sewage treatment and water supply, community facilities such as water and sewer, location and amount of open space, distribution of police and fire protection, and adequacy of the highway system.

2. EXISTING AND PROPOSED STREETS Higher density residential uses generate large traffic volumes. These residential uses require access to high capacity roadways. Thus, these uses may require locations on arterial or collector roads which are capable of carrying more traffic.

3. VARIETY OF HOUSING STYLES With present housing shortages and changing life styles, provision should be made in a zoning resolution for a variety of housing types. Many areas allow only single-family dwelling. This type of zoning, which excludes other housing types, promotes social segregation and has been overruled by the courts as unconstitutional. Besides single-family dwellings, zoning resolutions should make provisions for elderly housing, for two- and multi-family units, modular homes, and manufactured home parks, where the need exists. There is obviously more need for a variety of housing types in an unincorporated suburban area, however, than in a rural township of only a few hundred residents.

   Finally, a special word about manufactured home parks. Recently revised Chapter 3733 of the Ohio Revised Code provides for local regulation of manufactured home parks except for location. All new parks must conform to State minimum standards, and local zoning resolutions cannot specify regulations in conflict with these provisions.

BUSINESS DISTRICTS Much zoning for commercial activities is not realistic. The amount of land zoned for commercial purposes should be based on economic need. Marketing studies generally show that an area can support commercial uses occupying two to eight percent of its land area. Too often it is believed that all land adjacent to major roadways is potential commercial land. The result of this type of zoning is strip business development which is not desirable. In the final analysis, it is the aggregate buying power of the market area which limits commercial development, not speculative commercial zoning.

As in the case of residential districts, the number and type of business districts will vary from area to area. Some commercial districts are for larger communities, and may not be needed in smaller rural areas. Business districts differentiate between commercial activities on a functional basis and on the basis of the size of the population served. Classical zoning lists each individual commercial use as either permitted or conditionally permitted in each zoning district. This technique, which is also extensively used for industrial uses, is inflexible. For example, a zoning resolution would have to be amended when a particular use similar to an explicitly permitted use is

not listed in the permitted or conditionally permitted use section. This problem can be partially corrected by grouping commercial and industrial activities under general classifications. Thus commercial uses may be broken down into such general classifications as convenience, highway, office-type, business services, professional activities; and manufacturing into heavy, light, extractive, and other related manufacturing uses. Utilizing such an approach allows a zoning inspector to decide if specified uses fall within the general category. Clear definitions of what constitutes each classification are, however, needed to guide the zoning inspector.

INDUSTRIAL DISTRICTS Industrial district zoning has traditionally been designed to protect residential uses. Today, however, it is realized that balanced growth is healthy and that modern industrial design, construction and operation may be compatible with other uses.

A common practice for industrial zoning is to zone land for industry that is not needed or desirable for any other use. This often includes low lying, swampy, or hilly land. But industry should have some of the most accessible and developable land if the community sincerely desires balanced growth. In addition, it is just as important to protect industrial land from residential intrusions as it is to protect residential areas from industrial penetration.

Furthermore, industry needs large tracts of land. Most industrial structures have one or two stories. The buildings are usually well set back from the road, and most newer industrial operations are landscaped. A large site is also required to provide sufficient off-street parking and to allow for future expansion. The industrial park concept is being used more frequently to provide industry with the amenities it needs as well as to enhance community development. A well-planned industrial park will provide adequate utilities such as water, sewer, electricity, and natural gas; access to major highways to handle large amounts of truck traffic; and a location which does not interfere with residential living.

Two other points about ill-conceived industrial zoning should be mentioned. First, often all the land adjacent to railroad tracks is zoned for industry, causing an industrial strip. Second, the tendency is to zone more land for industry than can be effectively utilized. As with commercial zoning, the amount of industrial land that can be marketed is limited. The rule should be to zone a sufficient amount of land for industry, with proper facilities and other services, which will allow the area to achieve a balanced economy. Seldom will this mean more than ten or twelve percent of the area's land.

PLANNED UNIT DEVELOPMENT

Planned Unit Development (PUD) is a means of encouraging flexible and innovative development. While a PUD may be almost exclusively residential in character, PUD's are usually large-scale (from 20 up to 1000 acres) developments that efficently blend combinations of residential uses with a variety of commercial, public service or even industrial uses. The various land uses are specially designed so that they are compatible and harmonious with each other, the natural environment and surrounding land uses. PUD's are designed to achieve several very important objectives usually not possible with conventional development. These include:

1. A wide choice of living environments by allowing a variety of housing and building types;

2. A more useful pattern of open space and recreation areas;

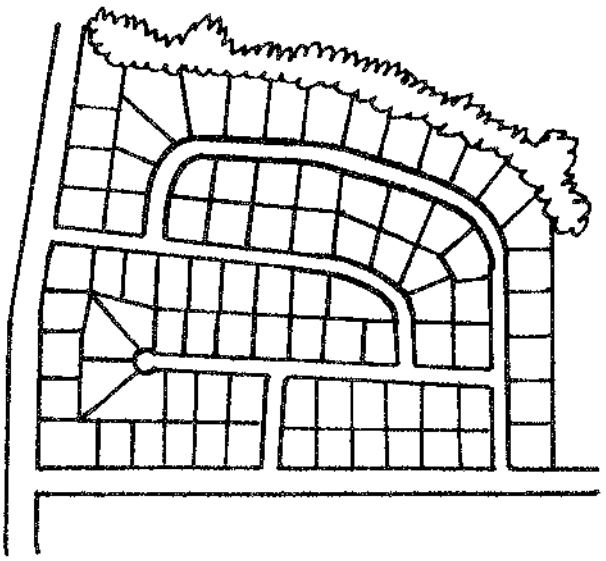
3. A development pattern which preserves and utilizes natural topographic and geologic features, scenery, trees, and other vegetation, and prevents the disruption of drainage patterns;

4. A more efficient use of land than is generally achieved through conventional development resulting in substantial savings through shorter streets and utility lines;

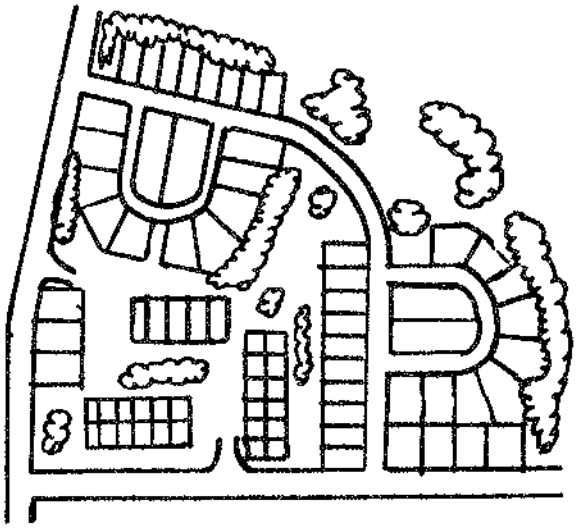
5. A development pattern in harmony with land use density, transportation, and community facility objectives of the comprehensive plan.

Information on Planned Unit Development techniques is generally available from planning commissions and university planning schools.

CONVENTIONAL SUBDIVISION



PLANNED UNIT DEVELOPMENT



CHARACTERISTICS	CONVENTIONAL SUB-DIVISION	PLANNED UNIT DEVELOPMENT SUB-DIVISION
NUMBER OF LOTS	108 (single family detached)	108
AVERAGE LOT SIZE	17,000 sq. ft.	10,000 sq. ft. (72 s.f. detached @ 13,000 sq. ft.) 26 s.f. attached @ 4,000 sq. ft.)
PERCENT OF OPEN SPACE	10%	50%
LINEAR FEET OF STREETS	5,400 linear feet	4,900 linear feet
LINEAR FEET OF SEWER LINE	5,400 linear feet	3,900 linear feet
HOUSING CHOICE single family detached	Generally none - only sing types pos- homes.	wide range of hou- sible. Lends it- self to diversity.
MARKETABILITY	Varies with location, price and market.	Properly designed open space is strong selling point: often out- sells traditional subdivisions.

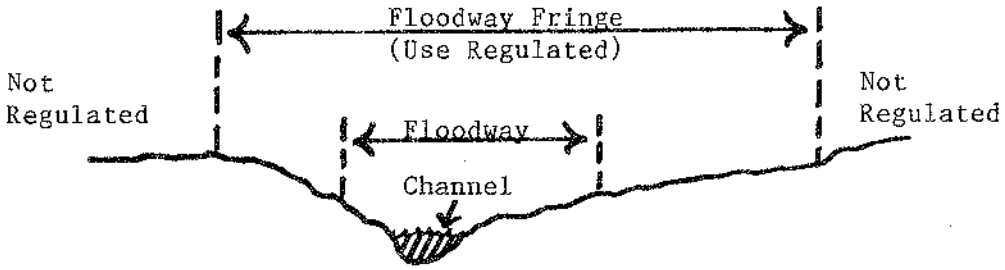
CHARACTERISTICS	CONVENTIONAL SUB-DIVISION	PLANNED UNIT DEVELOPMENT SUB-DIVISION
LEGAL REQUIREMENTS	Requires compliance with zoning and subdivision regulations.	Allows for reductions from the strict regulations following careful review of site plans by the county or township zoning authority.
MAINTENANCE COST OF COMMON OPEN SPACE	Only open space is in privately-owned yards.	Costs are shared by residents through home-owner's association or assured by municipality when open space is publicly owned.
COSTS OF UTILITY LINES	Usually high due to relatively larger lot sizes resulting in greater frontage.	Townhouses or clustering of single-family homes can result in economies in installation and maintenance.
COSTS OF ROAD INSTALLATION AND MAINTENANCE	High proportion of land devoted to street results in higher costs.	Minimal portion of total land area in streets with resultant economies.
RECREATION SPACE	Private back yards and public parks (often located at a distance).	Easy access to large public or resident-owned common open space, as well as back-yards in most cases.
SITE PLAN	Little opportunity for variety or imaginative design.	Allows maximum flexibility.
NATURAL FEATURES	Usually disturbed to facilitate construction and ensure maximum number of units.	Preserved as amenities integral to site plan.
AUTO TRAFFIC	Rapid through traffic possible unless it is discouraged by good design.	Cul-de-sacs and general design discourage through traffic.
PEDESTRIAN MOVEMENTS	Intersections make walking unsafe, particularly for children.	Can be designed to separate pedestrian and vehicular traffic for maximum safety.

FLOOD PLAIN ZONING

Zoning is the most effective of the police powers available to regulate flood hazard areas. It provides local governments with a means to guide flood plain development along orderly lines and represents a positive approach to encourage proper land use in accordance with the economic and ecological principles significant to a flood plain.

The purpose of flood plain zoning is to prevent new flood-hazardous land uses in the floodway and to control the nature of development in the floodway fringe. When properly used, it can bring about utilization of the flood plain in a manner compatible with both the area's needs and the flood plain's natural functions.

The channel, the floodway, and the floodway fringe are the three basic parts of the regulatory flood plain.



The channel is a natural or artificial watercourse that confines and conducts sustained or intermittent streamflow. The floodway is the channel and those parts of the adjoining flood plain that are reasonably required to carry and discharge the 100-year flood without a substantial increase in stage. The floodway fringe is the area within the regulatory flood plain that is outside the floodway. The floodway fringe serves primarily as a backwater storage area.

Zoning is not the only means to control development in flood plains, however. Subdivision regulations enable a county to control the design and quality of development proposed for flood plains. They may require that the floodway and floodway fringe areas be clearly identified on the plat map, and can also be used to exclude structures from the undeveloped floodway through construction-related provisions. These provisions commonly stipulate that a certain amount of public open space be set aside in the subdivision; that water and sewer facilities, roads, and other public utilities be restricted to flood-safe locations; or that buildings be erected above a stated elevation, either through natural land elevation or artificial filling.

Building Codes cannot prohibit development, but they can control the design and construction of new buildings. They may require the provision of flood-proof features, which greatly reduce the potential of structural and interior flood damage in regulated areas. Housing and sanitary codes are measures that call for the maintenance of safe and sanitary conditions in and around structures. Sanitary codes can prohibit the construction of sewage disposal facilities that could threaten human health in the event of a flood.

One of the most effective means of controlling land use is outright purchase of the land for public open space. This is an expensive proposition, but long-run benefits, both in economic and social terms, probably surpass the initial costs.

Flood plain zoning has grown in recent decades. Land uses allowed in these areas vary. All agricultural uses, including forestry, are usually permitted. The extraction and processing of mineral resources and a variety of recreational facilities are often allowed as conditional uses. Conditional use permits are also required for sewage plants, incinerators, radio towers, parking areas, and other uses not susceptible to major flood damage. Buildings, gradings, and fillings that obstruct flood flow generally are prohibited.

One-family residences are allowed in some flood plain zones after approval of location and design. The ground surface and main flood elevation must be at a stated height above probable flood levels. Foundation walls, footings and construction must be able to withstand flood conditions. Substantial benefits accrue to prospective homeowners who are forewarned of the flood hazard. The local and wider community benefits from lessened health hazards, from reduced flood damages to public properties, from lowered outlays for clean-up and public assistance, and from reduced expenditures for flood zoning are sustained only by those who would profit from use, sale, or development of land for purposes prohibited by the zoning regulations.

The National Flood Insurance Program is a more indirect but effective tool for flood plain management. The National Flood Insurance Act of 1968 authorizes the Secretary of the U.S. Department of Housing and Urban Development (HUD) to establish and carry out a National Flood Insurance Program. This program provides federally-subsidized, low-cost flood insurance to property owners in any community that meets the eligibility requirements. The use of flood insurance plays a major role in the flood plain management program. This involves the use of zoning resolutions, building codes, and subdivision regulations that will ensure public safety and maximize the security of structural developments located on the flood plain. This application of proper flood plain management practices provides for a minimum of risk bearing on behalf of individual property owners and the federal government.

Insurance coverage under this program is available for all structures used for residential, business, religious, and agricultural purposes. This includes properties occupied by non-profit organizations and properties owned by state or local governments or their agencies. The types of losses that flood insurance covers are those due to inundation by flood waters from the overflow of streams and rivers, or other inland water.

In summary, there are three basic ideas behind flood plain zoning:

1. Flooding is a natural phenomenon that cannot be stopped.

2. Preventive programs must be established to keep development out of the floodway, as this is nature's safety valve for flooding.

3. Development must be regulated in the floodway fringe to reduce or eliminate the potential for additional loss of life and flood damages.

The Office of Flood Plain Management of the Ohio Department of Natural Resources (ODNR) has developed model regulations to assist Ohio's local governments with the adoption of flood plain management standards. This ODNR Office also has several informative publications available on this subject, which may be obtained upon request to the following address:

Office of Flood Plain Management
Division of Water
Ohio Department of Natural Resources
Fountain Square
Columbus, Ohio 43224-1387
Telephone: 614/265-6755

AIRPORT ZONING

Airports play an important role in the determination of land development patterns in the State of Ohio, since warehouses, manufacturing plants, and other facilities often desire locations near airports.

Airport zoning is a specialized type of zoning that guarantees that surrounding land uses will not be incompatible with the airport. Airport zoning also insures that aircraft approaches will not be obstructed by structures being erected to hazardous heights. Most Ohio municipalities and counties have adopted airport zoning, and court cases have upheld the control in both the Ohio and U.S. Supreme Courts. Airport zoning is authorized by Chapter 4563 of the Ohio Revised Code.

The intent of airport zoning is to protect air approaches to the airport from interference. It usually limits heights and other uses which might interfere with communications and the landing and taking-off of aircraft. The Ohio Revised Code refers to the restricted area as the "airport hazard area," which is designated by the Ohio Division of Aviation.

The zoning of an airport hazard area is initiated by the legislative authority of the political subdivision in which the airport is located. This is often the Board of County Commissioners. They appoint an airport zoning commission which drafts the resolution and submits it to the Ohio Division of Aviation. The Division of Aviation reviews the zoning plan for compliance with federal aviation requirements. Following this review, public hearings are held on the resolution, and it may be adopted by the Board of County Commissioners. Unlike county and township zoning, no vote is required for airport zoning. An airport board of zoning appeals must also be appointed. The airport zoning commission and appeals board may be an existing zoning commission or appeals board.

The Ohio Division of Aviation furnishes several highly useful publications on airport zoning and provides technical assistance upon request. They may be contacted at the following address:

Ohio Bureau of Aviation
Ohio Department of Transportation
2829 W. Dublin Granville Road
Worthington, Ohio 43085
Telephone: (614) 466-7120

NON-CONFORMITIES

No matter how carefully district boundaries are drawn, some buildings, uses, land, or structures will not conform to the district regulations. Subsequent zoning amendments or district changes will also make certain uses non-conforming. Such existing uses, buildings, lands, or structures must be allowed to remain; however, their use should be regulated and ultimately eliminated.

In the past, problems with non-conformities often stemmed from a lack of understanding and separation of the different types of non-conformities. In reality, there are four types of non-conformities, each requiring specific treatment in the zoning resolution:

1. Non-conforming lots;

2. Non-conforming uses of land;

3. Non-conforming structures;

4. Non-conforming uses of structures.

Non-conforming lots do not meet requirements for minimum width and/or area. Owners of single lots of this type should be permitted to construct a single family house on the lot, provided that setback and side yard requirements are met. However, if a series of adjacent non-conforming lots are in the same ownership, the lots should be recombined and then divided to conform to the lot requirements.

Non-conforming uses of land are those uses of land not containing substantial buildings and which do not conform to the permitted uses allowed in the zoning district. Examples could include mineral extraction or equipment storage. These uses should be prohibited from expanding or from erecting additional structures.

Non-conforming structures are those buildings, fences, or billboards which do not conform to the yard or height provisions of the zoning resolution. These structures must be allowed to remain as they are, but should not be altered or enlarged to increase the degree of non-conformity. Both non-conforming uses of land and non-conforming structures should be prohibited from resuming if the use has been voluntarily discontinued or abandoned for a period of two years or more.

Non-conforming uses of structures (or structures and land in combination) involve the use of the building for a purpose not permitted in the zoning district involved. An excellent example is the use of a residence as a television repair shop, barber shop, or veterinary clinic in an otherwise strictly residential area. As with the other categories of non-conformities, the use must be allowed to continue. The use may not be expanded to other structures, but may be expanded within the original building. Such uses may be substituted, through an appeal to the board of zoning appeals, for another use equally appropriate for the zoning district involved.

Owners of non-conforming structures (and of uses of structures) should be allowed to perform normal maintenance, minor structural alterations and remodeling, as long as the building is not enlarged. As noted earlier the zoning inspector should maintain an inventory of all non-conformities so that questions concerning the date of establishment may be resolved later.

In the long run, non-conformities should be eliminated. Many zoning resolutions in Ohio contain provisions that allow for increases in non-conforming activities. One frequently found provision allows complete rebuilding if a non-conforming structure is destroyed by not more than 75 percent of its value by fire or an act of God. Such provisions tend to further the existence of non-conformities, and are thus at variance to modern concepts on non-conformity. Such provisions, however, may make zoning more readily acceptable to many voters.

ANNEXATION

Township or county zoning resolutions do not apply within municipal corporations. The exception to this rule is land zoned under township or county zoning which is incorporated or annexed. Rural zoning regulations apply and are enforced by township or county officials until the election and qualification of the officers for a newly incorporated area. The rural zoning regulations, however, may not remain in effect for longer than 90 days after the election of municipal officers. The 90-day period enables the officials of the newly incorporated territory to adopt a zoning ordinance.

Upon annexation of land to an existing municipal corporation, the zoning regulations then in effect remain in full force and should be enforced by the township or county officials until the legislative authority of the municipal corporation either officially adopts the existing zoning regulations or new regulation for this territory.

Some city and village zoning ordinances have provisions which automatically place newly annexed land in the basic single-family or agricultural district. The Ohio Supreme Court has ruled that such provisions are unconstitutional. Land cannot be zoned automatically by a simple paragraph in an ordinance accepting land for annexation; zoning can only be applied to an area by the regular municipal amendment process.

ZONING MAP

Essential to the success of any zoning resolution is an accurate map showing all district boundaries. The map should be adopted as part of the zoning resolution and should be identified by the signatures of the Township Trustees or County Commissioners. The map should also be attested to by the township or county clerk and bear the seal of the township or county. Subsequent amendments to the map should be made on the map with the notation of the nature of the change, the effective date, and the signature of the inspector or other official charged with maintaining the map.

The map should be drawn to such a scale that the map is both easy to handle and large enough to show individual property lines. In some cases, more than one sheet may be necessary. Copies of the map, as well as the resolution itself, should be available to the public from either the zoning inspector or clerk at a fee sufficient to cover the costs of preparation. A citizen must always be able to find out about the specific regulations affecting his property or property he is interested in acquiring.

PUBLIC HEARINGS

Public hearings must be conducted as part of the approval procedures for amendments, appeals, variances, conditional uses, the original adoption of the resolution, and the approval of planned unit developments. The following are suggestions for holding public hearings.

1. There must always be a quorum of the members present at any public hearing.

2. The board holding the public hearing should know in detail all the aspects of the case for which the public hearing is being held. The Board must do its homework.

3. A stenographer should be present and a summary of the proceedings should be prepared. A tape recorder could also be used, and a word for word transcription should be prepared if there are later court proceedings on the issue. A tape recorder has another advantage in that generally the decorum of the hearing will be maintained better, since people will be more careful of what they say when they know it is being recorded.

4. The chairman should introduce himself and the other members of the board, thank the people for their attendance and explain how the hearing will proceed. He should explain that the purpose of the hearing is to listen to the view of the citizens and that, after consideration of the points raised in the hearing, a decisions will be made at a later time. The chairman should stress that order must prevail, and that debates, argumentative questioning, or cross examinations are not allowed. All persons desiring to speak may be sworn at the same time to expedite the hearing.

5. The chairman should recognize the applicant(s) or their agent(s) who should explain in detail the request. (Often a time limit is set for proponents and opponents to speak following the applicant. All questions of the applicant and witnesses should be directed through the hearing chairperson.)

6. Before any person speaks, he should be recognized by the chairman and state his name and address, and that he has been sworn.

7. When there are no more questions or comments, the chairman should thank all those present for their attendance and assure them that their comments will be considered carefully. He should also explain that the board will make the determination or that the question will be referred to another group for a final decision. If there will be further public hearings on the questions, this should be stated.

Finally, it should be pointed out that the public hearing should not be the primary basis for the determination of a request, but should supplement previous study and conclusions. The board, whether elected or appointed, is supposed to represent not only the vocal group at a public hearing, but also those many citizens in the community who did not attend the public hearing, but will be affected by the final decision.

THE REGIONAL CONTEXT

Much has been said in this handbook about designing a zoning resolution to "fit" each unique area. Perhaps in earlier years it was sufficient to consider only the needs of a small local area in drafting controls. Today, however, local governments in many areas must consider the impact of land use controls, particularly zoning, on the larger metropolitan region. Controls should fit both the locality and the region. If zoning resolutions are drawn with the intent of excluding large portions of the population of the region, they may be ruled exclusionary and unconstitutional in the courts. Resolutions are also liable to be overruled if the effect, as distinguished from the intent, is to exclude.

Exclusionary zoning resolutions can be defined as those which deny minorities, females, and low-income persons housing when an obvious need for such housing exists. Therefore, a key element in drafting non-exclusionary controls must be to determine housing needs of both the immediate area and the region. The housing needs in a township on the fringe of a metropolitan area, but in the path of immediate suburban growth, differ greatly from needs in a more rural area. Zoning resolutions must reflect these differences in their provisions, especially in the design of residential districts. Although complete resolutions have been overturned because their exclusionary elements could not be singled out, courts and other critics have most often attacked minimum lot sizes, low densities, minimum floor areas, and the exclusion of multiple family dwellings.

Some may think it contradictory both to encourage low density agriculture zones and to warn against exclusionary zoning. There is no contradiction if zoning districts are drafted and placed on the map in a rational manner. If an area is in the path of urban expansion, that expansion should be accommodated in the design of controls to allow urban or suburban-type densities. That same area can still, however, attempt to zone for agriculture, or low density residential uses, those areas most suitable for agriculture or least suitable for residences.

APPENDIX A

OHIO REVISED CODE

CHAPTER 303: COUNTY RURAL ZONING

Section:

303.01	Definition
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S. 303.01 Definition

As used in sections 303.02 to 303.25, inclusive, of the Revised Code, "agriculture" includes agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry.

S. 303.02 Land use in unincorporated territory

For the purpose of promoting the public health, safety, and morals, the board of county commissioners may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures including tents, cabins, and trailer coaches and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such county, and for such purposes may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform, for each class or kind of building or other structure or use, throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

(S. 303.02.1) S. 303.021 Designation of street names; assignment of numbers to buildings

The board of county commissioners may designate street names and assign numbers to buildings along streets in unincorporated areas. The owners of such buildings shall number or renumber such buildings in accordance with the numbers assigned by the county commissioners.

S. 303.022 County May Adopt Planned-Unit Development Regulations

A county zoning resolution or amendment adopted in accordance with this chapter may establish or modify planned-unit development regulations, which regulations shall only apply to property at the election of the property owner and which regulations may include standards to be used by the board of county commissioners or, if the board so chooses, by the county zoning commission, in determining whether to approve or disapprove any planned-unit development. The regulations shall further the purpose of promoting the general public welfare, encouraging the efficient use of land and resources, promoting greater efficiency in providing public and utility services, and encouraging innovation in the planning and building of all types of development. Within a planned-unit development, the county zoning, subdivision, and platting regulations need not be uniform, but may vary in order to accommodate unified development and to promote the public health, safety, and morals, and the other purposes of this section. County regulations adopted pursuant to this section may require developers to obtain conditional or final certification of compliance with county zoning, subdivision, or platting regulations at specified stages of development. If standards are adopted for approval or disapproval of planned-unit developments, no planned-unit development shall be approved unless the plan for that development satisfied the standards of approval established under this section. No approval of a planned-unit development as being in compliance with the standards of approval established under this section, if any, shall be considered to be an amendment or supplement to the county zoning resolution for the purpose of section 303.12 of the Revised Code.

As used in this section, "planned-unit development" means a development which is planned to integrate residential, commercial, industrial, or any other use.

S. 303.023 Prior PUDs Lawful Origin

Any planned-unit development regulations adopted in accordance with section 303.12 of the Revised Code, or any planned-unit developments constructed or approved in a preliminary or final form, under the provisions of a zoning resolution adopted prior to the effective date of this section, if otherwise lawful had they originated on that date, shall be deemed to have been lawful from their origin and the developments shall continue to be governed by regulations in effect at the time of approval, or as modified.

S. 303.03 Adoption of resolution of intention to proceed with county rural zoning (GC S.3180-2)

Before availing itself to the powers conferred in section 303.02 of the Revised Code, the board of county commissioners shall pass a resolution declaring its intention to proceed under sections 303.01 to 303.25, inclusive, of the Revised Code. The board may act in the following manner:

(A) It may adopt such a resolution upon its own initiative.

(B) It shall adopt such a resolution if there is presented to it a petition, signed by a number of qualified voters residing in the unincorporated area of each township or part thereof to be included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board to proceed with county rural zoning under such sections.

S. 303.04 County rural zoning commission

The board of county commissioners of any county proceeding under sections 303.01 to 303.25, inclusive, of the Revised Code, shall create and establish a county rural zoning commission. The commission shall be composed of five members who reside in the unincorporated area of the county to be zoned, to be appointed by the board, and the terms of the members shall be of such length and so arranged that the term of one member will expire each year. Where there is a county or regional planning commission the board of county commissioners may appoint qualified members of such commission who reside in the unincorporated area of the county to serve on the county rural zoning commission. Each member shall serve until his successor is appointed and qualified. Members of the zoning commission shall be removable for nonperformance of duty, misconduct in office, or other cause by the board, upon written charges being filed with the board, after a public hearing has been held regarding such charges, and after a copy of the charges has been served upon the member so charged at least ten days prior to the hearing, either personally, by registered mail, or by leaving such copy at his usual place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by the board and shall be for the unexpired term.

S. 303.05 Recommendations of county rural zoning commission; organization, powers and compensation of commission

The county rural zoning commission shall submit a plan, including both text and maps, representing the recommendations of the zoning commission for the carrying out by the board of county commissioners of the powers, purposes, and provisions set forth in sections 303.01 to 303.99, inclusive, of the Revised Code, including additions to territory in which a county zoning plan is in effect.

The zoning commission may, within the limits of the moneys appropriated by the board for the purpose, employ or contract with such planning consultants and executive and other assistants as it deems necessary except that where a county or regional planning commission is established, the zoning commission shall use the same planning consultants and executive and other assistants as provided for such county or regional planning commission if so ordered by the board. The zoning commission shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations. Members of the zoning commission may be allowed their expenses, or such compensation, or both, as the board may approve and provide. No county commissioner shall be employed by the zoning commission of his county.

The zoning commission shall make use of such information and counsel as is available from appropriate public officials, departments, and agencies and such officials, departments, and agencies having information, maps and data pertinent to county rural zoning shall make them available for the use of the zoning commission.

In any county where there is a county or regional planning commission, the zoning commission shall request such planning commission to prepare or make available to the zoning commission a zoning plan, including text and maps, for the unincorporated area of the county or any portion of the same.

S. 303.06 Public hearing on recommendations; notice

Before certifying its recommendations of a zoning plan to the board of county commissioners, the county rural zoning commission shall hold at least one public hearing in each township affected by the proposed zoning plan, notice of which shall be given by one publication in one or more newspapers of general circulation in the township at least thirty days before the date of such hearing. The notice shall state the place and time at which the text and maps of the proposed zoning resolution may be examined.

S. 303.07 Submission of proposed zoning resolution to county or regional planning commission (GC S.3180-6)

Following the hearing provided for in section 303.06 of the Revised Code, the county rural zoning commission shall submit the proposed zoning resolution, including text and maps, to the county or regional planning commission of the county or district in which the county is located, if there is such a commission, for approval, disapproval, or suggestions.

The approval of the planning commission shall be conclusively presumed unless, within twenty days after receiving the proposed zoning resolution, it notifies the zoning commission to the contrary.

In the event the planning commission disapproves of the proposed zoning resolution or suggests any material change, the zoning commission shall hold a public hearing on the resolution in each township affected by the proposed changes, due notice of which shall be given as provided in section 303.06 of the Revised Code. When the zoning commission has completed its recommendations for a zoning plan it shall certify the plan to the board of county commissioners.

S. 303.08 Public hearing on zoning plan (GC S.3180-7)

After receiving the certification of a zoning plan from the county rural zoning commission, and before adoption of any such zoning resolution, the board of county commissioners shall hold a public hearing on the resolution, at least thirty days' notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the county.

S. 303.09 Changes in text or maps; second hearing

No change in or departure from the text or maps as certified by the county rural zoning commission, shall be made by the board of county commissioners unless it is first resubmitted to the county rural zoning commission for approval, disapproval, or suggestions. Upon receipt of the recommendations of the county rural zoning commission regarding the proposed changes, the board of county commissioners shall hold a second public hearing, at least ten days notice of the time and place of which shall be given by one publication in one or more newspapers of general circulation in the townships affected. If such changes are disapproved by the zoning commission, the provision so disapproved must receive the favorable vote of the entire membership of the board of county commissioners in order to be adopted.

S. 303.10 County commissioners to vote upon adoption of resolution (GC S.3180-9)

After receiving the recommended zoning plan from the county rural zoning commission and holding the public hearing provided for by section 303.08 of the Revised Code, the board of county commissioners shall consider such recommendations and vote upon the adoption of the zoning resolution.

S. 303.11 Zoning plan to be submitted to electors

If the zoning resolution is adopted by the board of county commissioners, such board shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the county included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. on the seventy-fifth day before the day of the election. No zoning regulations shall be put into effect in any township, unless a majority of the vote cast on the issue in that township is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect in all townships which voted approval, eliminating from the plan any township which did not vote approval.

S. 303.12 Amendments to zoning resolution; notices and hearings; referendum

(A) Amendments to the zoning resolution may be initiated by motion of the county rural zoning commission, by the passage of a resolution therefor by the board of county commissioners or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the county rural zoning commission. The board of county commissioners may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee therefor to defray the cost of advertising, mailing, and other expenses. If the board of county commissioners requires such a fee, it shall be required generally, for each application. The board of county commissioners shall upon the passage of such resolution certify it to the county rural zoning commission.

Upon the adoption of such motion, or the certification of such resolution or the filing of such application, the county rural zoning commission shall set a date for a public hearing thereon, which date shall not be less than twenty nor more than forty days from the date of adoption of such motion or the date of the certification of such resolution or the date of the filing of such application. Notice of such hearing shall be given by the county rural zoning commission by one publication in one or more newspapers of general circulation in each township affected by such proposed amendment at least ten days before the date of such hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the county auditor's current tax list. The failure of delivery of such notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing;

(2) A statement indicating that the motion, resolution or application is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the zoning commission;

(8) A statement that after the conclusion of such hearing the matter will be submitted to the board of county commissioners for its action.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) A statement that after the conclusion of such hearing the matter will be submitted to the board of county commissioners for its action;

(6) Any other information requested by the zoning commission.

Hearings shall be held in the county courthouse or in a public place designated by the zoning commission.

(E) Within five days after the adoption of such motion or the certification of such resolution or the filing of such application the county rural zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the county rural zoning commission. Such recommendation shall be considered at the public hearing held by the county rural zoning commission on such proposed amendment.

The county rural zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment, or the approval of some modification thereof and shall submit such recommendation together with such application or resolution, the text and map pertaining thereto and the recommendation of the county or regional planning commission thereon to the board of county commissioners.

The board of county commissioners shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment, which date shall be not more than thirty days from the date of the receipt of such recommendation from the county rural zoning commission. Notice of such public hearing shall be given by the board by one publication in one or more newspapers of general circulation in the county, at least ten days before the date of such hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and shall include all of the following:

(1) The name of the board that will be conducting the public hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the board that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after such public hearing the board shall either adopt or deny the recommendation of the zoning commission or adopt some modification thereof. In the event the board denies or modifies the recommendation of the county rural zoning commission the unanimous vote of the board shall be required.

Such amendment adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment there is presented to the board of county commissioners a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board to submit the amendment to the electors of such area, for approval or rejection, at a special election to be held on the day of the next primary or general election. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment proposal is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM"

(if the proposal is identified by particular name or number, or both, these should be inserted here) _____.

A proposal to amend the zoning map of the unincorporated area of _____ _____ Township, _____ County, Ohio, adopted _____ (date) _____ followed by brief summary of the proposal.

To the Board of County Commissioners of _____ County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of _____ _____ Township, included within the _____ County Zoning Plan, equal to not less than eight percent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of County Commissioners to submit this amendment of the zoning resolution to the electors of _____ Township residing within the unincorporated area of the township included in the _____ County Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on _____ (date) _____ pursuant to section 303.12 of the Revised Code.

Signature, Street Address or R.F.D, Township, Precinct, County, Date of Signing.

_____

_____

STATEMENT OF CIRCULATOR

_____ (name of circulator)

declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing _____ (number) _____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____
(Signature of circulator)

_____
(Address)

_____
(City, village or township, and zip code)

The Penalty for election falsification is imprisonment for not more than six months, or a fine of not more than one thousand dollars, or both.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters it shall take immediate effect.

(S.303.12.1) S.303.121 Ratification of amendments to county rural zoning plan

All amendments or supplements to a county rural zoning plan adopted by a board of county commissioners prior to the effective date of this act, except those amendments or supplements which a court of competent jurisdiction has declared unlawful or unreasonable or which are the subject of an action now pending in such a court, are hereby ratified and shall be valid amendments or supplements to such rural zoning plan regardless of the procedure followed with respect to such amendments or supplements prior to their adoption by a board of county commissioners, except that no right of appeal on the issue of the unlawful or unreasonable character of an amendment or supplement shall be lost by the provisions of this section.

S. 303.122 (Untitled)

No action challenging the validity of a zoning resolution or of any amendment to such a resolution because of a procedural error in the adoption of the resolution or amendment shall be brought more than two years after the adoption of the resolution or amendment.

S. 303.13 County board of zoning appeals; compensation and expenses

In any county which adopts zoning regulations the board of county commissioners shall appoint a county board of zoning appeals of five members who shall be residents of the unincorporated territory in the county included in the area zoned, not more than two of whom shall be from any one township if the area includes three or more townships. The terms of all members shall be of such length and so arranged that the term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Members may be removed for the same causes and in the same manner as provided by section 303.04 of the Revised Code. Vacancies shall be filled by the board of county commissioners and shall be for the unexpired term. The members may be allowed their expenses or compensation, or both, as the board of county commissioners may approve and provide.

The board of zoning appeals may, within the limits of the moneys appropriated by the board of county commissioners for the purpose, employ such executive, professional, technical, and other assistants as it deems necessary.

S. 303.14 Powers of county board of zoning appeals

The county board of zoning appeals may:

(A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of section 303.01 to 303.25 of the Revised Code, or of any resolution adopted pursuant thereto;

(B) Authorize upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution;

D) Revoke an unauthorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

The board shall notify the holder of the variance or certificate by certified mail of its intent to revoke the variance or certificate under division (D) of this section and of his right to a hearing before the board within thirty days of the mailing of the notice if he so requests. If the holder requests a hearing, the board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person, by his attorney, or by other representative or he may present his position in writing. He may present evidence and examine witnesses appearing for or against him. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

In exercising the above-mentioned powers, such board may, in conformity with such sections, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

S. 303.15 Rules, organization and meetings of zoning appeals board; procedure for appeals to board; notice and hearing.

The county board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution. Meetings of the board of zoning appeals shall be held at the call of the chairman, and at such other times as the board determines. The chairman, or in his absence the acting chairman, may administer oaths, and the board of zoning appeals may compel the attendance of witnesses. All meetings of the board of zoning appeals shall be open to the public. The board of zoning appeals shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of county commissioners and be a public record.

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the county affected by any decision of the administrative officer. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.

The board of zoning appeals shall fix a reasonable time for the public hearing of the appeal, give at least ten days notice in writing to the parties in interest, give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing and decide the appeal within a reasonable time after it is submitted. Upon the hearing, any person may appear in person or by attorney.

S. 303.16 Enforcement of zoning regulations; county zoning inspector (GC S.3180-15)

For the purpose of enforcing the zoning regulations, the board of county commissioners may provide for a system of zoning certificates, and for this purpose may establish and fill the position of county zoning inspector, together with such assistants as the board deems necessary, fix the compensation for such positions, and make disbursements for them. In any county in which a county building inspector has been appointed in accordance with section 307.38 of the Revised Code, such official shall be the county zoning inspector for the purposes of sections 303.01 to 303.25, inclusive, of the Revised Code.

S. 303.17 Zoning certificate required (GS S.3180-16)

No person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under section 303.16 of the Revised Code, and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect.

S. 303.18 County regulations inapplicable to municipal territory except for period after incorporation or annexation

Regulations enacted by a board of county commissioners under sections 303.01 to 303.25, inclusive, of the Revised Code, shall not apply within municipal corporations, except that where county territory, subject to such regulations, is incorporated, such regulations shall apply therein and be enforced by the county officials until the election and qualification of the officers for the newly incorporated territory, and for not to exceed ninety days thereafter, to enable the officers of the newly incorporated territory to adopt zoning regulations. Upon annexation of county territory to an existing municipal corporation, the zoning regulations then in effect shall remain in full force and shall be enforced by county officials until the legislative authority of said municipal corporation shall either officially adopt the existing zoning regulations or new regulations for such territory.

S. 303.19 Nonconforming use of buildings and land not affected by zoning (GC S.3180-18)

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with the provisions of such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of land shall be in conformity with sections 303.01 to 303.25, inclusive, of the Revised Code. The board of county commissioners shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonforming uses upon such reasonable terms as are set forth in the zoning resolution.

S. 303.20 Outdoor advertising classified as business use (GC S.3180-19)

For the purposes of sections 303.01 to 303.25, inclusive, of the Revised Code, outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, trade, or lands used for agricultural purposes.

S. 303.21 Powers not conferred by chapter

(A) Except as otherwise provided in division (B) of this section, sections 303.01 to 303.25 of the Revised Code do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, and no zoning certificate shall be required for any such building or structure.

(B) A county zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 [711.13.1] of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate;

(1) Agriculture on lots of one acre or less;

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 303.19 of the Revised Code.

Division (B) of this section confers no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any board of county commissioners, county rural zoning commission, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for a farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of county commissioners, as provided in section 303.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety.

(S. 303.21.1) S. 303.211 Limitations on zoning powers

Sections 303.01 to 303.25 of the Revised Code do not confer any power on any board of county commissioners or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business.

Such sections confer no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

Such sections do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

S. 303.22 Township zoning regulations to take precedence (GC S.3180-22)

Where the people of any township or part thereof have approved township zoning regulations in accordance with sections 519.02 to 519.25, inclusive, of the Revised Code, prior to the adoption of a county rural zoning resolution by the board of county commissioners, and the county plan includes any area covered by the township zoning plan, the zoning resolution adopted by the board of township trustees shall take precedence over the zoning resolution adopted by the board of county commissioners, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the township plan of zoning replaced with the plan of county rural zoning.

S. 303.23 Violation of resolution and regulations (GC S.3180-23)

No person shall locate, erect, construct, reconstruct, enlarge, change, maintain, or use any building or use any land in violation of a resolution, or amendment or supplement to such resolution, adopted by any board of county commissioners under section 303.01 to 303.25, inclusive, of the Revised Code. Each day's continuation of such violation is a separate offense.

S. 303.24 Actions instituted to prevent violation (GC S.3180-24)

In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, or any land is or is proposed to be used in violation of sections 303.01 to 303.25, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of county commissioners under such sections, such board, the prosecuting attorney of the county, the county zoning inspector, the county building inspector, or any adjacent or neighboring property owner who would be specially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use.

S. 303.25 County zoning plan repeal in township; procedure

In any township in which there is in force a plan of county zoning, the plan may be repealed by the board of county commissioners, as to such township, in the following manner:

(A) The board may adopt a resolution upon its own initiative.

(B) The board shall adopt a resolution, if there is presented to it a petition, similar in all relevant aspects to that prescribed in section 303.12 of the Revised Code, signed by a number of qualified voters residing in the unincorporated area of such township included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the question of whether or not the plan of zoning in effect in such township shall be repealed, to be submitted to the electors residing in the unincorporated area of the township included in the zoning plan at a special election to be held on the day of the next primary or general election. The resolution adopted by the board of county commissioners to cause such question to be submitted to the electors shall be certified to the board of elections not later than seventy-five days prior to the day of election at which the question is to be voted upon. In the event a majority of the vote cast on such question in the township is in favor of repeal of zoning, then such regulations shall no longer be of any effect. Not more than one election shall be held in any two calendar years.

S. 303.99 Penalty

(a) Whoever violates sections 303.01 to 303.25, inclusive of the Revised Code, shall be fined not more than one hundred dollars for each offense.

APPENDIX B

OHIO REVISED CODE

CHAPTER 519: TOWNSHIP ZONING

Section:

519.01	Definition
519.02	Township trustees may regulate building and land use in unincorporated territory for public purpose
519.021	Township may adopt planned-unit development regulations
519.022	Prior PUDs lawful origin
519.03	Adoption of resolution of intention to proceed with township zoning
519.04	Township zoning commission
519.05	Recommendations of township zoning commission; organization, powers and compensation of commission
519.06	Public hearings on recommendations; notice
519.07	Proposed zoning resolution to county or regional planning commission; approval; public hearing if resolution disapproved; certification of township trustees
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519.12	Amendments to zoning resolution; procedure; referendum
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519.122	(Untitled)
519.13	Township board of zoning appeals; compensation and expenses
519.14	Powers of township board of zoning appeals
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S. 519.01 Definition

As used in sections 519.02 to 519.25, inclusive, of the Revised Code, "agriculture" includes agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry.

S. 519.02 Township trustees may regulate building and land use in unincorporated territory for public purpose

For the purpose of promoting the public health, safety, and morals, the board of township trustees may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such township, and for such purposes may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

S. 519.021 Township May Adopt Planned-Unit Development Regulations

A township zoning resolution or amendment adopted in accordance with this chapter may establish or modify planned-unit development regulations, which regulations shall only apply to property at the election of the property owner and which regulations may include standards to be used by the board of township trustees or, if the board so chooses, by the township zoning commission, in determining whether to approve or disapprove any planned-unit development. The regulations shall further the purpose of promoting the general public welfare, encouraging the efficient use of land and resources, promoting greater efficiency in providing public and utility services, and encouraging innovation in the planning and building of all types of development. Within a planned-unit development, the township zoning regulations need not be uniform, but may vary in order to accommodate unified development and to promote the public health, safety, morals, and the other purposes of this section. If standards are adopted for approval or disapproval of planned-unit developments, no planned-unit development shall be approved unless the plan for that development satisfies the standards of approval established under this section. No approval of a planned-unit development as being in compliance with the standards of approval established under this section, if any, shall be considered to be an amendment or supplement to the township zoning resolution for the purpose of section 519.12 of the Revised Code.

As used in this section, "planned-unit development" means a development which is planned to integrate residential, commercial, industrial, or any other use.

S. 519.022 Prior PUDs Lawful Origin

Any planned-unit development regulations adopted in accordance with section 519.12 of the Revised Code, or any planned-unit developments constructed or approved in a preliminary or final form, under the provisions of a zoning resolution adopted prior to the effective date of this section, if otherwise lawful had they originated on that date, shall be deemed to have been lawful from their origin and the developments shall continue to be governed by regulations in effect at the time of approval, or as modified.

S. 519.03 Adoption of resolution of intention to proceed with township zoning

Before availing itself of the powers conferred by section 519.02 of the Revised Code, the board of township trustees shall pass a resolution declaring its intention to proceed under sections 519.02 and 519.25, inclusive, of the Revised Code. The board may act in the following manner:

(A) It may adopt such a resolution upon its own.

(B) It shall adopt a resolution if there is presented to it a petition signed by a number of qualified voters residing in the unincorporated area of the township or part thereof to be included in the zoning plan equal to not less than eight percent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board to proceed with township zoning under such sections.

S. 519.04 Township Zoning Commission

The board of township trustees of any township proceeding under sections 519.01 to 519.99, inclusive, of the Revised Code, shall create and establish a township zoning commission. The commission shall be composed of five members who reside in the unincorporated area of the township, to be appointed by the board, and the terms of the members shall be of such length and so arranged that the term of one member will expire each year. Where there is a county or regional planning commission the board may appoint qualified members of such commission to serve on the township zoning commission. Each member shall serve until his successor is appointed and qualified. Members of the zoning commission shall be removable for non performance of duty, misconduct in office, or other cause by the board, upon written charges being filed with the board, after a public hearing has been held regarding such charges, and after a copy of the charges has been served upon the member so charged at least ten days prior to the hearing, either personally, by registered mail or by leaving such copy at his usual place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by the board and shall be for the unexpired term.

S. 519.05 Recommendations of township zoning commission; organization, powers and compensation of commission

The township rural zoning commission shall submit a plan, including both text and maps, representing the recommendations of the zoning commission for the carrying out by the board of township trustees for the powers, purposes, and provisions set forth in sections 519.01 to 519.99, inclusive, of the Revised Code, including additions to territory in which a township zoning plan is in effect.

The zoning commission may, within the limits of the moneys appropriated by the board for the purpose, employ or contract with such planning consultants and executive and other assistants as it deems necessary. The zoning commission shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations. Members of the zoning commission may be allowed their expenses, or such compensation, or both, as the board may approve and provide. No township trustee shall be employed by the zoning commission of his township.

The zoning commission shall make use of such information and counsel as is available from appropriate public officials, departments, and agencies and such officials, departments; and agencies having information, maps, and data pertinent to township zoning shall make them available for the use of the zoning commission.

In any county where there is a county or regional planning commission, the zoning commission may request such planning commission to prepare or make available to the zoning commission a zoning plan, including text and maps for the unincorporated area of the township or any portion of the same.

S. 519.06 Public hearings on recommendations; notice

Before certifying its recommendations of a zoning plan to the board of township trustees, the township zoning commission shall hold at least one public hearing, notice of which shall be given by one publication in one or more newspapers of general circulation in the township at least thirty days before the date of such hearing. The notice shall state the place and time at which the text and maps of the proposed zoning resolution may be examined.

S. 519.07 Proposed zoning resolution to county or regional planning commission; approval; public hearing if resolution disapproved; certification of township trustees

Following the hearing provided for in section 519.06 of the Revised Code the township zoning commission shall submit the proposed zoning resolution, including text and maps, to the county or regional planning commission of the county or district in which the township is located, if there is such a commission, for approval, disapproval, or suggestions.

The approval of the planning commission shall be conclusively presumed unless, within twenty days after receiving the proposed zoning resolution, it notifies the zoning commission to the contrary.

In the event the planning commission disapproves of the proposed zoning resolution or suggests any material change, the zoning commission shall hold a public hearing on the resolution, due notice of which shall be given as provided in section 519.06 of the Revised Code. When the zoning commission has completed its recommendations for a zoning plan it shall certify the plan to the board of township trustees.

S. 519.08 Public hearing on zoning plan

After receiving the certification of a zoning plan from the township zoning commission, and before adoption of any zoning resolution, the board of township trustees shall hold a public hearing on the resolution, at least thirty days notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the township.

S. 519.09 Changes in text or maps; second hearing

No change in or departure from the text or maps, as certified by the township zoning commission, shall be made by the board of township trustees unless it is first resubmitted to the commission for approval, disapproval, or suggestions. Upon receipt of the recommendations of the township rural zoning commission regarding the proposed changes, the board of township trustees shall hold a second public hearing, at least ten days notice of the time and place of which shall be given by one publication in one or more newspapers of general circulation in the township affected. If such changes are disapproved by the zoning commission, the provision so disapproved must receive the favorable vote of the entire membership of the board of township trustees in order to be adopted.

S. 519.10 Trustees to vote upon adoption of resolution

After receiving the recommended zoning plan from the township zoning commission and holding the public hearing provided for by section 519.03 of the Revised Code, the board of township trustees shall consider such recommendations and vote upon the adoption of the zoning resolution.

S. 519.11 Zoning plan to be submitted to electors; majority vote required for approval

If the zoning resolution is adopted by the board of township trustees, such board shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the township included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the election. No zoning regulations shall be put into effect unless a majority of the vote cast on the issue is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect, if the plan was so approved.

S. 519.12 Amendments to zoning resolution; procedure; referendum

(A) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution therefor by the board of township trustees, or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. The board

of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee therefore to defray the cost of advertising, mailing, and other expenses. If the township trustees require such a fee, it shall be required generally, for each application. The board of township trustees shall upon the passage of such resolution certify it to the township zoning commission.

Upon the adoption of such motion, or the certification of such resolution or the filing of such application, the township zoning commission shall set a date for a public hearing thereon, which date shall not be less than twenty nor more than forty days from the date of the certification of such resolution or the date of adoption of such motion or the date of the filing of such application. Notice of such hearing shall be given by the township zoning commission by one publication in one or more newspapers of general circulation in the township at least ten days before the date of such hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the county auditor's current tax list. The failure of delivery of such notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing;

(2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the zoning commission;

(8) A statement that after the conclusion of such hearing the matter will be submitted to the board for its action.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) A statement that after the conclusion of such hearing the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by the zoning commission.

(E) Within five days after the adoption of such motion or the certification of such resolution or the filing of such application the township zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the township zoning commission. Such recommendation shall be considered at the public hearing held by the township zoning commission on such proposed amendment.

The township zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment, or the approval of some modification thereof and submit such recommendation together with such application or resolution, the text and map pertaining thereto and the recommendation of the county or regional planning commission thereon to the board of township trustees.

The board of township trustees shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment, which date shall not be more than thirty days from the date of the receipt of such recommendation from the township zoning commission. Notice of such public hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of such hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and shall include all of the following:

(1) The name of the board that will be conducting the public hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the board that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after such public hearing the board shall either adopt or deny the recommendations of the zoning commission or adopt some modification thereof. In the event the board denies or modifies the recommendation of the township zoning commission the unanimous vote of the board shall be required.

Such amendment adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment there is presented to the board of township trustees a petition, signed by a number of registered electors residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight percent of the total vote cast for all candidates for governor in such area

at the last preceding general election at which a governor was elected, requesting the board of township trustees to submit the amendment to the electors of such area for approval or rejection at a special election to be held on the day of the next primary or general election. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and a statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM"

(if the proposal is identified by a particular name or number, or both, these should be inserted here) _____.

A proposal to amend the zoning map of the unincorporated area of _____ Township, _____ County, Ohio, adopted _____ (date) _____ (followed by brief summary of the proposal).

To the Board of Township Trustees of _____ Township, _____ County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of _____ Township, included within the _____ Township Zoning Plan, equal to not less than eight percent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of _____ Township residing within the unincorporated area of the township included in the _____ Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary of general election to be held on _____ (date) _____, pursuant to section 519.12 of the Revised Code.

Signature, Street Address or R.F.D., Township, Precinct, County, Date of Signing

_____

_____

STATEMENT OF CIRCULATOR

_____ (name of circulator) _____ declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing _____ (number) _____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____
(Signature of circulator)

_____
(Address)

_____
(City, village, or township, and zip code)

The penalty for election falsification is imprisonment for not more than six months, or a fine of not more than one thousand dollars, or both.

The petition shall be filed, accompanied by an appropriate map of the area affected by the zoning proposal, with the board of township trustees, which shall then transmit the petition within two weeks of its receipt to the board of elections, which shall determine the sufficiency and validity of the petition. The petition shall be certified to the board of elections not less than seventy-five days prior to the election at which the question is to be voted upon.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters it shall take immediate effect.

(S. 519.12.1) S. 519.121 Ratification of amendments to township zoning plan

All amendments or supplements to a township zoning plan adopted by a board of township trustees prior to the effective date of this act, except those amendments or supplements which a court of competent jurisdiction has declared unlawful or unreasonable or which are the subject of an action now pending in such a court, are hereby ratified and shall be valid amendments or supplements to such zoning plan regardless of the procedure followed with respect to such amendments or supplements prior to their adoption by a board of township trustees, except that no right of appeal on the issue of the unlawful or unreasonable character of an amendment or supplement shall be lost by the provisions of this section.

S. 519.122 (Untitled)

No action challenging the validity of a zoning resolution or of any amendment to such a resolution because of a procedural error in the adoption of the resolution or amendment shall be brought more than two years after the adoption of the resolution or amendment.

S. 519.13 Township board of zoning appeals; compensation and expenses

In any township which adopts zoning regulations the board of township trustees shall appoint a township board of zoning appeals of five members who shall be residents of the unincorporated territory in the township included in the area zoned. The terms of all members shall be of such length and so arranged that the term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Members shall be removable for the same causes and in the same manner as provided by section 519.04 of the Revised Code. Vacancies shall be filled by the board of township trustees and shall be for the

unexpired term. The members may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.

The board of zoning appeals may within the limits of the moneys appropriated by the board of township trustees for the purpose, employ such executives, professional, technical, and other assistants as it deems necessary.

S. 519.14 Powers of township board of zoning appeals

The township board of zoning appeals may:

(A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto;

(B) Authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution;

(D) Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

The board shall notify the holder of the variance or certificate by certified mail of its intent to revoke the variance or certificate under division (D) of this section and of his right to a hearing before the board, within thirty days of the mailing of the notice, if he so requests. If the holder requests a hearing, the board shall set a time and place for the hearing, and notify the holder. At the hearing, the holder may appear in person, by his attorney or other representative, or he may present his position in writing. He may present evidence and examine witnesses appearing for or against him. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

In exercising the above-mentioned powers, such board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

S. 519.15 Rules, organization and meetings of zoning appeals board

The township board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution. Meetings of the board of zoning appeals shall be held at the call of the chairman, and at such other times as the board determines. The chairman, or in his absence the acting chairman, may administer oaths, and the board of zoning appeals may compel the attendance of witnesses. All meetings of

the board of zoning appeals shall be open to the public. The board of zoning appeals shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of township trustees and be a public record.

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.

The board of zoning appeals shall fix a reasonable time for the public hearing of the appeal, give at least ten days' notice in writing to the parties in interest, give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing and decide the appeal within a reasonable time after it is submitted. Upon the hearing, any person may appear in person or by attorney.

S. 519.16 Enforcement of zoning regulations; township zoning inspector

For the purpose of enforcing the zoning regulations, the board of township trustees may provide a system of zoning certificates, and for this purpose may establish and fill the position of township zoning inspector, together with such assistants as the board deems necessary, fix the compensation for such positions, and make disbursements for them. The township clerk may be appointed secretary of the township zoning commission, secretary of the township board of zoning appeals, and zoning inspector, and he may receive compensation for such services in addition to other compensation allowed by law.

(S. 519.16.1) S. 519.161 Inspector's bond

The township zoning inspector, before entering upon the duties of his office, shall give bond, signed by a bonding or surety company authorized to do business in this state, or, at his option, signed by two or more freeholders having real estate in the value of double the amount of the bond, over and above all incumbrances to the state, in the sum of not less than one thousand or more than five thousand dollars as fixed by the board of township trustees. Such surety company or real estate bond shall be approved by the board of township trustees and the bond shall be approved by the board of township trustees and the bond shall be conditioned upon the faithful performance of such zoning inspector's official duties. Such bond shall be deposited with the township clerk.

S. 519.17 Zoning certificate required

No person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under section 519.16 of the Revised Code, and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect.

S. 519.18 Township regulations inapplicable to municipal territory except for period after incorporation or annexation

Regulations enacted by a board of township trustees under sections 519.02 to 519.25, inclusive, of the Revised Code, shall not apply within municipal corporations, except that where township territory, subject to such regulations, is incorporated, such regulations shall apply therein and be enforced by the township officials until the election and qualification of the officers for the newly incorporated territory, and for not to exceed ninety days thereafter, to enable the officers of the newly incorporated territory to adopt zoning regulations. Upon annexation of township territory to an existing municipal corporation the zoning regulations then in effect shall remain in full force and shall be enforced by the township officials until the legislative authority of said municipal corporation shall either officially adopt the existing zoning regulations or new regulations for such territory.

S. 519.19 Nonconforming use of buildings and land not affected by zoning (GC S. 3180-43)

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of said land shall be in conformity with sections 519.02 to 519.25, inclusive, of the Revised Code. The board of township trustees shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning regulation.

S. 519.20 Outdoor advertising classified as business use

For the purposes of sections 519.02 to 519.25, inclusive, of the Revised Code, outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, or trade, or lands used for agricultural purposes.

S. 519.21 Powers not conferred by chapter

(A) Except as otherwise provided in division (B) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

(B) A township zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 [711.13.1] of the Revised Code that are contiguous to one another,

or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate:

(1) Agriculture on lots of one acre or less;

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 519.19 of the Revised Code.

Division (B) of this section confers no power on any township zoning commission, board of township trustees, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for a farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety.

(S. 519.21.1) S. 519.211 Limitations on zoning powers

Sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

Such sections do not confer any power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

S. 519.22 County rural zoning regulations to take precedence

Where the people of any township or part thereof have approved county rural zoning regulations in accordance with sections 303.02 to 303.25, inclusive, of the Revised Code, prior to the adoption of a zoning resolution by the board of township trustees, and the township plan includes any area covered by the county rural zoning plan, the zoning resolution adopted by the board of county commissioners shall take precedence over the zoning resolution adopted by the board of township trustees, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the county rural zoning plan replaced with the township plan of zoning.

S. 519.23 Prohibition against violating resolution

No building shall be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, and no land shall be used in violation of any resolution, or amendment or supplement to such resolution, adopted by any board of township trustees under sections 519.02 to 519.25, inclusive, of the Revised Code. Each day's continuation of a violation of this section may be deemed a separate offense.

S. 519.24 Action to prevent violations of zoning regulations; special council

In case any building is or is proposed to be located, erected, constructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of sections 519.01 to 519.99, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of township trustees under such sections, such board, the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section.

S. 519.25 Township zoning plan repeal; procedure; referendum

In any township in which there is in force a plan of township zoning, the plan may be repealed by the board of township trustees in the following manner:

(A) The board may adopt a resolution upon its own initiative.

(B) The board shall adopt a resolution if there is presented to it a petition, similar in all relevant aspects to that prescribed in section 519.12 of the Revised Code, signed by a number of qualified electors, residing in the unincorporated area of such township included in the zoning plan equal to not less than eight percent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting that the question of whether or not the plan of zoning in effect in such township shall be repealed, be submitted to the electors residing in the unincorporated area of the township included in the zoning plan at a

special election to be held on the day of the next primary or general election. The resolution adopted by the board of township trustees to cause such question to be submitted to the electors shall be certified to the board of elections not later than seventy-five days prior to the day of election at which said question is to be voted upon. In the event a majority of the vote cast on such question in the township is in favor of repeal of zoning, then such regulations shall no longer be of any effect. Not more than one such election shall be held in any two calendar years.

S. 519.99 Penalty

(A) Whoever violates sections 519.01 to 519.25, inclusive, of the Revised Code shall be fined not more than one hundred dollars for each offense.

APPENDIX C

RURAL ZONING CHECKLISTS

The three checklists which follow summarize the procedures contained in Chapters 303 and 519 of the Ohio Revised Code (Appendices A and B, respectively, in this Handbook).

RURAL ZONING ENACTMENT CHECKLIST

1. Legislative authority (board of county commissioners or board of township trustees) adopts a resolution of intent to proceed with rural zoning.

2. Legislative authority appoints zoning commission.

3. Zoning commission drafts zoning resolution.

4. Zoning commission schedules public hearing(s).

5. Zoning commission publishes hearing notice(s) at least 30 days before hearing(s).

6. Zoning commission holds public hearing(s).

7. Zoning commission submits resolution to county/regional planning commission for advice.

8. County or regional planning commission responds within 20 days.

9. If county or regional planning commission suggests material changes or disapproves zoning resolution, zoning commission holds second public hearing(s).

10. If second hearing(s) needed, 30-day published notice must be given.

11. Zoning commission sends recommended zoning resolution to legislative authority.

12. Legislative authority schedules a public hearing.

13. Legislative authority publishes hearing notice at least 30 days before hearing.

14. Legislative authority holds public hearing.

15. If legislative authority desires to modify the zoning resolution as recommended by the zoning commission, the changes must first be submitted to the zoning commission for review.

16. If modifications are made to the originally proposed zoning resolution, the legislative authority must schedule a second public hearing.

17. If a second hearing is needed, the legislative authority must publish a hearing notice at least 10 days before the hearing.

18. Legislative authority votes on adoption of the zoning resolution. (see ORC sections 303.09 and 519.09).

19. Legislative authority must file zoning resolution with board of elections at least 75 days before the election.

20. After election, legislative authority must appoint a board of zoning appeals and designate a zoning inspector.

RURAL ZONING AMENDMENT CHECKLIST

1. Amendment is initiated by application of property owner, motion of zoning commission, or resolution of legislative authority.

2. Resolution is certified by the legislative authority to the zoning commission.

3. Zoning commission schedules public hearing no sooner than 20 and no later than 40 days from the date of application, motion, or resolution.

4. Proposed amendment is sent to county or regional planning commission within 5 days of receipt.

5. County or regional planning commission makes recommendation to zoning commission.

6. If 10 or less parcels of land are to be rezoned, written notice must be sent to interested owners at least 10 days before hearing by the zoning commission.

7. Zoning commission publishes notice of public hearing at least 10 days before hearing.

8. Zoning commission holds public hearing.

9. Zoning commission makes recommendation to legislative authority within 30 days after hearing.

10. Legislative authority schedules a public hearing within 30 days of receipt of zoning commission's recommendation.

11. Legislative authority publishes hearing notice at least 10 days before hearing.

12. Legislative authority holds public hearing.

13. Legislative authority must make final decision within 20 days of public hearing (see ORC Sections 303.12 (H) and 519.12(H)).

14. Amendment becomes effective in 30 days unless referendum is requested.

RURAL ZONING APPEAL, VARIANCE, AND CONDITIONAL USE CHECKLIST

1. Applicant submits proper application form.

2. Zoning inspector transmits all records to board of zoning appeals.

3. Board of zoning appeals schedules a public hearing within a "reasonable time" (within 20 days of application filing is recommended).

4. Board of zoning appeals sends a notice of public hearing to parties in interest at least 10 days before hearing.

5. Board of zoning appeals publishes hearing notice at least 10 days before hearing.

6. Board of zoning appeals holds public hearing.

7. Board of zoning appeals makes a decision within a "reasonable time" (again, it is recommended to do so within 20 days).

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